Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1996

G. Balasubramani,

Petitioner,

v.

Merrill Lynch, Pierce, Fenner & Smith, Inc.,

Defendant.

On Petition For Writ Of Certiorari
To The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

G. Balasubramani, Pro-se
16742 Superior Street
Northridge, CA 91343
Tel. (818) 893-6464

83 pp

QUESTIONS PRESENTED:

1) Whether Arbitration Panel's/NASD's refusal to grant access to mandated record of proceedings, and a federal court's implicit endorsement of such action violates Due Process guaranteed by the Fifth Amendment.

2) Whether a federal court's refusal to consider a pro-se petitioner's reply brief which exceeded page limit, and/or a federal court's failure to ask pro-se petitioner to re-file, (thus, the ruling was made *sans* the reply brief and evidence), violates Due Process guaranteed by the Fifth Amendment.

3) Whether a federal court's refusal to allow a pro-se person any leeway, against an able opponent, to present arguments or testimony, violates the Equal Protection Clause.

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In The

Supreme Court of the United States

October Term, 1996

On Petition For Writ Of Certiorari
To The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully pray that a Writ of Certiorari issue to review the judgment of the U.S. Court of Appeals for the Ninth Circuit entered on May 3, 1996.

Opinions Below.

The opinion of the United States court of appeals appears at Appendix ("App.") "C" to this petition and is unpublished. The opinion of the United States district court appears at Appendix "E" to this petition.

Jurisdiction.

The date on which the United States curt of appeals decided was May 3rd, 1996. No petition for rehearing was filed.

The jurisdiction of this court is invoked under 28 U.S.C. sec. 1254(1).

Constitutional and Statutory Provisions Involved:

U.S. Constitution, Amendment V.
28 U.S.C. sec. 1254(1)
9 U.S.C. sec. 2
Fed. R. Civ. P. 15(a)

STATEMENT OF THE CASE.

Petitioner prays for the court's indulgence to treat pro-se Petitioner with less stringent rules, and permit Petitioner to offer proof. See Haines v. Kerner, 404 U.S. 519, 520-521 (1971).

As per agreement with Merrill Lynch which stated that all disputes between Petitioner and Merrill Lynch will be submitted to arbitration, Petitioner and Merrill Lynch signed a terms of submission with National Association of Dealers, Inc., ("NASD"), for arbitration.

The arbitration proceedings ended on 23 June, 1994. On 27th June, 1994, Petitioner sent fax to NASD asking permission to submit closing arguments for consideration by the arbitration panel. (App. "P"). Immediately on receipt of Petitioner's fax, NASD telephoned Petitioner and said the verdict had already been received and that the record was closed.

Correspondence from NASD shows that the Arbitration Panel neglected to return the record of proceedings to NASD when they gave the verdict to NASD. On receipt of the Arbitration award, Petitioner asked NASD for a record of proceedings. Petitioner diligently reminded NASD many times, including one instance where Petitioner gave NASD a 10th October, 1994 deadline (App. "Q"). The Arbitration Panel finally delivered the record of proceedings (later discovered to be edited) to NASD, on 14th November, 1994, 140 days from 27th June when the Panel gave the verdict to NASD. (App. "S").

Petitioner asked NASD for a transcript of the arbitration proceedings. NASD refused, and asked Petitioner to make his own arrangements. In the process of transcribing the record, Petitioner discovered much testimony missing. Petitioner asked NASD for a complete record of the arbitration proceedings. (App. "T", "U", "V"). Through their 21st April 1995 letter (App. "W"), NASD asked Claimant to go to court. A declaration from Mr. Paul

Sonnenburg, giving brief summation of events, is in App. "N".

With help of filing counter staff at the Federal district court in San Diego, Petitioner filed complaint ("Complaint") on 15th May, 1995. Merrill Lynch replied on 6th June, 1995. Petitioner took Merrill Lynch's reply to filing counter staff asking for next step. Petitioner was told to reply, within 30 days, to all the points contained in Merrill Lynch's reply, and give proof to court.

When Petitioner asked what "No Oral Argument Required" in Merrill Lynch's reply meant, court staff said "that [oral argument] is for the other party, you will always have your day in court, and the Judge will listen to you." Petitioner replied on 6th July, 1995, and provided proof of service to court. In his reply brief ("Reply"), Petitioner asked for due process, and dropped the California residents to satisfy the diversity issue raised by Merrill Lynch, asking the trial court's permission to amend his pleading.

Petitioner then went to law libraries and prepared materials for the hearing ("Hearing Materials"). At the 2nd October, 1995 hearing, Petitioner learned from the Judge that the court had come prepared to rule, and Petitioner did not know how to react.

The Court dismissed Petitioner's Complaint for lack of subject matter jurisdiction. Timely appeal was filed. The Ninth Circuit court Affirmed trial court's judgment.

CASE MEETS BOTH DUE PROCESS AND DIVERSITY CRITERIA

Due Process:

The District Court either failed to consider Petitioner's Due Process claims altogether or by implication, considered and dismissed them as meritless. Petitioner repeatedly raised Due Process issues in his Complaint, and Reply. Without an accurate record of proceedings, the pro-se Petitioner was effectively prevented from understanding the arbiter's resolution of the issues

presented, and was thus denied knowing the general and specific grounds upon which to file suit in the district court.

In Griffin v. Illinois, 351 U.S. 12 (1955), Petitioners contended that failure to provide them with the needed transcript would violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and the court ruled that "destitute defendants must be afforded as adquate appellate review as defendants who have money enough to buy transcripts." Id. at 19. Thus, under Griffin, which holds that failure to provide indigent defendants with trial transcripts violates Due Process, NASD's failure to provide petitioner with the arbitration transcript (and the district court's implicit endorsement of such action) violates Due Process.

Diversity:

Upon Merrill Lynch's raising the diversity issue, Petitioner dropped the California residents in the Reply, requesting leave of the court to amend the Complaint. Bonar v. Dean Witter Reynolds, 835 F.2d 1378, 1382, (11th Cir. 1988), allows amendment to the pleading.

Petitioner relied on the filing counter court staff's advice to give Reply to court. Aetna Insurance Co. v. Hartshorn, 477 F.2d 97, 101 (1973), gave the benefit of a re-hearing to the party who "was misinformed and misled by the court -- albeit innocently."

In NLRB v. Monsanto Chemical, 205 F.2d 763 (1953), the Board said it was powerless in the public interest to relax the time provisions of its procedural rules, but the court ruled:

> "it is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it." Id. at 764.

The same argument was used by the court in American Farm Lines v. Black Ball, 397 U.S. 532, 539 (1969), to reverse a decision when the lower court said the ICC rules are inflexible.

It was at NASD's request (App. "O"), the Merrill Lynch's California resident employees, were added. These employees did not respond to Claimant's Statement of Claim. Merrill Lynch called these employees as Merrill Lynch's witnesses during arbitration proceedings. In court also, Merrill Lynch's counsel represented only Merrill Lynch, and the court's decision was sent only to Merrill Lynch's counsel.

In a matter of jurisdiction, in Duplan Corp. v. W.B. Davis Hosiery Mills, 442 F.Supp 86, 87 (S.D. N.Y. 1977), the court ruled:

> "(t)he sole question for decision is whether a valid agreement to arbitrate -- a prerequisite to jurisdiction under the Federal Arbitration Act, 9 U.S.C. sec 1 *et seq* was entered into by the parties to this action."

Such an agreement to arbitrate was entered into only between the Petitioner and Merrill Lynch at time of opening account.

"Section 2 of the Act provides that [a] written provision in . . . a contract . . . thereafter arising out of such contract of transaction . . . shall be valid . . ." Ibid. Again, such a contract under the Federal Arbitration Act, was entered into only between Petitioner and Merrill Lynch. Consequently, the Merrill Lynch employees mistakenly added to the Complaint are not required, and under the Act, cannot become parties to this action.

The same conclusion was reached in Califano. v. Shearson Lehman Bros., 690 F. Supp. 1354, 1355 (S.D. N.Y. 1988), where the court ruled that "although the Federal Arbitration Act established a federal policy favoring arbitration, there must first be an agreement to arbitrate."

The District Court should have noted that the due process claim raised by the Petitioner was sufficient for federal jurisdiction. Alternatively, considering Petitioner's pro-se status and the Merrill Lynch employees' immateriality to the suit, the District Court should have dismissed the employees upon Petitioner's dropping them, thus satisfying the diversity jurisdiction.

It is appropriate at this juncture to cite Justice Scalia's dissenting opinion, in Bowen v. Massachusetts, 487 U.S. 879, 930 (1987), in which Justices Rehnquist and Kennedy joined:

> "[n]othing is more wasteful than litigation about where to litigate, particularly when the options are all courts within the same legal system that will apply the same law."

In *Bowen,* the majority court ruled:

> "alleged improper Medical disallowances cannot always be adequately remedied in the Claims Court, as a jurisdictional or threshold matter, these actions should proceed in the district court." Id. at 927.

PROCEEDINGS BELOW:

Petitioner's 17 page Complaint, raising the due process issue, was supported by 313 pages of evidence. Petitioner's detailed Reply contained quotations of Thomas Hobbes from Leviathan, with no court cases but with logical arguments. The Reply substantiated with evidence how Petitioner was denied due process, and suggestions to improve arbitration procedures. Since the Reply exceeded page limit, the district court did not consider the Reply; neither did the district court ask Petitioner to re-file the Reply within page limit. Attached to the Reply was another 33 pages of evidence, including articles on Watergate tapes, with views of President Nixon, Senator Sam Ervin, Jr., Judge John Sirica, and Prosecutor Archibald Cox ("No man above law").

The 2nd October, 1995 hearing materials, prepared after going to law library, was 21 pages, which included citations for the first time. Petitioner presented to the district court, 139 full text pages of court cases for ready reference, with additional 34 pages of evidence. The 2nd October 21-page Hearing Materials given to the Bench were also not considered by the district court, being ruled untimely. However, Merrill Lynch's 6th June, 1995 opposition brief and Merrill Lynch's 6th October, 1995 supplementary reply filed after the hearing, both were considered.

Petitioner's Appeal brief was 20 pages, with supporting evidence of 254 pages of Excerpts of Record, ("ER"). Petitioner asked for ten minutes to tell Petitioner's side of the story at the appeal hearing. The Appeal Court determined the case suitable for decision without oral argument. Petitioner's Due Process rights have been thus violated as Petitioner never had an opportunity to fairly present his case.

In Anti-Fascist Committee v. McGrath, 341 U.S. 123, (1950), where the Attorney General branded Petitioners Communists without notice or hearing, the court ruled that:

> "This Court is not alone in recognizing that the right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." Id. at 168.

Merrill Lynch's counsel during 2nd October, 1995 hearing appeared to concede the diversity issue. The Petitioner was not questioned at the hearing about diversity, which he had answered in detail in his Reply of 6th July, 1995. Instead, the entire hearing was devoted to due process arguments relating to procedures under the terms of NASD Arbitration contract. (App. "F").

Federal due process question raised:

Denial of due process, a Federal question, was raised in the original Complaint, (App. "J"), with evidence. The denial of due process was again raised more than a dozen times in the Reply brief, (App. "K"), with proof. It was timely raised in the Petitioner's brief to the Appellate court (App. "L"), with 254 pages of Excerpts of Record, and again in the Reply brief to the Appellate court (App. "M").

In Branum v. Clark, 927 F.2d 698, 705 (2nd Cir. 1991), where a failure to state a claim by a pro-se student was dismissed by the lower court, the Appellate Court, citing *Haines* for pro-se, ruled that:

> "A *pro se* complaint is to be read liberally. []Certainly the court should not dismiss without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated. *See* Fed.R.Civ.P.15(a) (leave to amend "shall be freely given when justice so requires");"

The same court, in Mian v. Donaldson, Lufkin & Jenrette Securities, 7 F.3d 1085 (2nd Cir. 1993), repeated the ruling.

The District Court overlooked the due process issue entirely. The court incorrectly relied on the diversity issue and dismissed the case with prejudice. The Disctrict Court's ruling implies that in Petitioner's case, there is no due process issue, there is no due process violation, or that petitioner has not shown any circumstances where he is entitled to any due process. The due process issue provides subject matter jurisdiction to Federal courts.

REASONS FOR GRANTING THE WRIT.

Issues are of public importance:

Two significant issues of public importance are involved: how to ensure compliance with existing safeguards to protect a

pro-se person, so he/she is not denied Procedural Due Process at (1) Arbitration and, (2) Trial Court. There are out there many people like the Petitioner, but whose cry nobody hears and are getting buried, because they lack the wherewithal to bring up these compelling issues to your honors' level and attention. Your simple ruling in this case will send a message that constitutional safeguards cannot be ignored, even in the informal context of arbitration.

Arbitration procedure:

With apologies, and great deference and reverence, pro-se Petitioner respectfully and humbly submit this with just a few months' of manual research in law libraries.

After Wilko v. Swan, 346 U.S. 427 (1953), which held that claims arising under the Securities Act of 1933, were not subject to compulsory arbitration, the next major shift was Shearson/American Express v. McMahon, 482 U.S. 220, 233(1986), where the court said:

> "Even if *Wilko*'s assumptions regarding arbitration were valid at the time *Wilko* was decided, most certainly they do not hold true today for arbitration procedures subject to the SEC's oversight authority."

Next came the Volt Info. Sciences v. Bd. of Trustees, 109 S. Ct. 1248 (1989), about choice-of-law issue. *Volt* said that:

> "FAA . . . confers only the right to obtain an order directing that 'arbitration proceed in the manner provided for in [the parties'] agreement'." Id. at 1253, and,
>
> "[FAA] contains no express pre-emptive provision, nor does it reflect a congressional intent to occupy the entire field of arbitration." Id. at 1255.

Volt in plain language upheld the sanctity of private contracts over FAA :

> "[FAA] simply requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms . . . " Id. at 1255.

The court further averred:

> ". . . it does not follow that the FAA prevents the enforcement of agreements to arbitrate under different rules than those set forth in the Act itself . Indeed such a result would be quite inimical to the FAA's primary purpose of ensuring that private agreements to arbitrate are enforced according to their terms." Id. at 1255-56.

At the conclusion of their discussion, the Judges clarified the role of courts to rigorously enforce this new concept of arbitration as a creature of contract:

> "By permitting the courts to 'rigorously enforce' such agreements according to their terms, see Byrd, supra 470 U.S., at 221, 105 S. Ct., at 1242, we give effect to the contractual rights and expectations of the parties, without doing violence to the policies behind by the FAA." Id. at 1256.

The role of arbitration as a relatively quick and inexpensive method of alternate dispute resolution, and the concommitant decrease in the caseload on all courts is universally known and acknowledged. With the judicial deference, the need for better safeguard and protection were also recognised.

Arbitrators don't give reasons for their decision, ("Moreover, arbitrators are not bound by precedent and are actually discouraged by their associations from giving reasons for a decision.", *McMahon*, 482 U.S. at 259), and if the Arbitrators do not have to

give the record of proceedings also, the courts cannot perform any judicial review.

Therefore, based on *McMahon*, changes were made to arbitration procedures, including making the record of proceedings mandatory. See Mueske v. Piper, Jaffray & Hopwood, 859 P.2d 444, 447 (Montana, 1993), where the Supreme Court of Montana held "that the May 10, 1989 changes in the rules incorporated within the arbitration clause were deliberate and purposeful actions of the SEC which require proper recognition from the Court."

It is clear that all that Merrill Lynch wanted was to frustrate the pro-se Claimant's feeble efforts, who did not know any law then. The District Court, on the other hand, did not seem inclined to deal with the voluminous evidence on the controversial arbitration issue -- the contractual rights of parties according to the new theory in Volt, and the old theory of supremacy of FAA rules. It is unfortunate that the District Court did not see the due process issue Petitioner had raised. The court, therefore, dismissed the suit with prejudice on diversity grounds.

The instant case gives this Court a great opportunity to reiterate the truism that record of proceedings is part of the award, and terms of arbitration procedures, like the age-old private contract, is supreme over FAA, thus reinforcing and providing the needed protection to the innocent and unwary public. Waiting for involved and expensive hearings, will, in the interim, not only deny Due Process to many, but also eventually cost taxpayer money for the hearings. This ruling will also relieve the great burden placed on lower courts in dealing with arbitration issues.

Court Procedures:

At a minimum, the helpful filing counter staff at the court, should tell the inquiring or contacting public that, if court procedures are not followed, court won't read, and court procedures can be found at a law library. Helpful as the staff were, Petitioner

was denied due process, as evidence presented by Petitioner, exceeding page limit, was not considered by the District court.

In Continental Co. v. Union Carbide, 370 U.S. 690, 696 (1961), the Court said that the Appeals Court must give the benefit of doubt to the party who is being deprived:

> "The Court of Appeals was, of course, bound to view the evidence in the light most favorable to Continental and to give it the benefit of all inferences, even though contrary inferences might reasonably be drawn."

CONCLUSION:

> "The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decisionmaking process." See Marshall v. Jerrico, 446 U.S. 238, 242 (1979).

The same sentiment is echoed in Billington v. Underwood, 613 F.2d 91, 95 (1980),

> "the very notion of a hearing, however informal, connotes that the decision maker will listen to the arguments of both sides before basing a decision . . . ."

In Honda Motor Co. v. Obserg, 114 S.Ct. 2331, 2340 (1994), dealing with the Amendment to the Oregon Constitution prohibiting judicial review of amount of punitive damges, the court held that the Oregon Amendment violated the due process Clause of the Fourteenth Amendment, and said:

"In fact, most of our Due Process decisions involve arguments that traditional procedures provide too little protection and that additional safeguards are necessary to ensure compliance with the Constitution."

The major issue here is one of procedural due process -- should the constitutional requirement of procedural due process, as applied to all courts and through the common law to executive agencies performing quasi-judicial functions, also apply to arbitration proceedings conducted by NASD, which functions under the watchdog of the Securities Exchange Commission, a Regulatory agency created by Government?

The scope of review applied under arbitration procedures, especially the scope of due process with regard to procedure, must mirror that of the federal court system, as interpreted via the United States Constitution, if not in total, at least in semblance and in substance. In other words, the procedure due must fulfil the minimum constitutional requirements, as emboded in the Fifth Amendment.

In relevant part, the Due Process Clause of the Fifth Amendment of the United States Constitution states that no person may be deprived of "life, liberty, or propery, without due process of law".

Complying with Mathews v. Eldridge, 424 U.S. 319, 335 (1975), the nature and scope of due process protection applicabale to any particular deprivation is determined by the balancing test: (1) the private interest affected, (2) the risk of erroneous deprivation through procedures used, and cost of any additional safeguards, and (3) government's interest, and cost for additional or substitute procedures.

It is established that parties to an arbitration agreement should be "at liberty to choose the terms under which they will arbitrate", see Volt Info. Sciences v. Bd. of Trustees, 109 S.Ct.

1248, 1252 (1989), and, "courts to 'rigorously enforce' such agreements according to their terms", Id. at 1256, and, "courts should take seriously their duty to review the results of arbitration", see Shearson/American Exp. Inc. v. McMahon, 482 U.S. 220, 269 (1987), in part because of the high level of judicial deference arbitration awards are traditionally subject to. Thus, the "integrity of the process . . . [must] be zealously safeguarded," see Goldfinger v. Lisker, 500 N.E. 2d 857, 859 (N.Y. 1986).

The District Court in the instant case failed to follow *Volt, McMahon,* and *Goldfinger,* thus ignoring to enforce the contractual obligations. The Court also failed to apply the *Eldridge* balancing test, to protect the private interest from deprivation without due process of law -- the Petitioner is already entitled (as per sec. 37 of the NASD Code of Arbitration Procedure), to get record of proceedings -- only compliance with existing procedure was required, no subtitute or additional procedure was involved. Finally, the Court also ignored Petitioner's Complaint of being denied due process, clearly ruled in *Griffin.*

The Petitioner prays to your justices to exercise the supervisory power to rule on court procedures; and the interpretive function to rule that arbitration award includes transcript, and procedures should be followed, and pray for a Writ of Certiorari to issue to the U.S. Appellate Ninth Circuit to review their judgment.

Noting on the onerous responsibility of Judges, Thomas Hobbes in *Leviathan* declares:

> ". . . Princes succeed one another; and one Judge passeth, and another commeth; nay, Heaven and Earth shall passe; but not one title of the Law of Nature shall passe; for it is the Eternall Law of God. Therefore, all the Sentences of precedent Judges that have ever been, cannot all together make a Law contrary to naturall Equity: Nor any Examples of former Judges, can warrant an unreasonable Sentence, or discharge the present Judge of the trouble of studying what

is Equity (in the case he is to Judge) from the principles of his own naturall reason. For example sake, 'Tis against the Law of Nature, to punish the Innocent; . . ." (page 324).

Because his eloquent words in the *Common Man* so cogently summarize the principles on which I have based my appeal, I will ask Justice Holmes to conclude my pleading:

> "The life of the law has not been logic: it has been experience. The felt necessities of time, the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a great deal to do than the syllogism in determining the rules by which men should be governed.
>
> In Massachusetts to-day, while, on the one hand, there are a great many rules which are quite sufficiently accounted for by their manifest good sense, on the other, there are some which can only be understood by reference to the infancy of procedure among the German tribes, or to the social condition of Rome under the Decemvirs." (page 5).

I declare under penalty of perjury that all I have stated here is the truth, the whole truth, and nothing but the truth, so help me God.

Northridge, Los Angeles County, California, Dated this 22nd day of July, 1996.

Respectfully submitted,

G. Balasubramani, Pro-se
16742 Superior Street
Northridge, CA 91343
Tel. (818) 893-6464

APPENDIX 'B'

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 95-56547
CT/AG# CV-95-00628-JNK

BALASUBRAMANI
Plaintiff - Appellant
v.
MERRILL LYNCH, PIERCE,
FENNER & SMITH, Inc.
Defendant - Appellee

FILED
July 1, 1996
Clerk, U.S. District Court
Southern Distrtict of California
By "s/_____." Deputy

APPEAL FROM the United States District Court for the Southern District of California (San Diego).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California (San Diego) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered May 3, 1996.

A TRUE COPY
CATHY A CATTERSON
Clerk of Court
ATTEST

May 28, 1996.

ENTERED ON 7/2/96 26 by: "s/_____."

APPENDIX 'C'

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

G. BALASUBRAMANI,	)	FILED
Plaintiff-Appellant	)	May 3 1996
	)	Cathy A Catterson, Clerk
v.	)	U.S. Court of Appeals
	)	
MERRILL LYNCH, PIERCE,	)	No.95-56547
FENNER & SMITH, Inc.,	)	D.C. No. CV-95-00628-JNK
Defendant-Appellee.	)	
	)	MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Judith N. Keep, Chief Judge, Presiding
Submitted April 30, 1996**
Before: BROWNING, REINHARDT and FERNANDEZ,
Circuit Judges.

G. Balasubramani appeals pro se the district court's Fed. R. Civ. P. 12(b)(1) dismissal for lack of subject matter jurisdiction of his petition to vacate a National Association of Securities Dealer's arbitration award, pursuant to the Federal Arbitration Act, 9 U.S.C. sec. 1 et seq. In the underlying action, Balasubramani alleged that Merrill Lynch brokers engaged in unauthorized trading and use of margin, resulting in his losses in the stock market crash of 1987. For the reasons stated in the district court's order granting the motion to dismiss, we affirm. See Garrett v. Merrill Lynch Pierce, Fenner & Smith, Inc., 7 F.3d 882, 883 (9th Cir. 1993) (federal courts may hear claims under the Federal Arbitration Act only when there is an independent basis for federal jurisdiction).1/

AFFIRMED.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4

1/ Balasubramani's motion to file a late reply brief is granted.

APPENDIX 'D'

SOUTHERN DISTRICT OF CALIFORNIA
FILED
OCT 19 1995
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

JUDGMENT IN A CIVIL ACTION
CASE NUMBER 95-CV-628-K(AJB)

G. BALASUBRAMANI
V.
MERRILL LYNCH, WILLIAM SCHREYER, JOHN KUTASI, JOHN PESCHONG AND BURT ROSEN

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the Defendant's motion to dismiss Plaintiff's complaint for lack of subject matter jurisdiction is granted with prejudice.

October 19, 1995.
Date:

Roberta Westal
Clerk.
SEAL. G. Broas
(By) Deputy Clerk
ENTERED ON October 19, 1995

APPENDIX 'E'

FILED
OCT 18 1995
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

G. BALASUBRAMANI Plaintiff v. MERRILL LYNCH,WILLIAM SCHREYER, JOHN KUTASI JOHN PESCHONG, and BURT ROSEN, Defendant	Civil Case No. 95-0628-K(AJB) ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

On October 2, 1995 at 10.30 a.m., Defendants Merrill Lynch, William Schreyer, John Kutasi, John Peschong and Burt Rosen sought dismissal of Plaintiff G. Balasubramani's Complaint/Petition to Vacate Arbitration Award pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

With leave of the Court, Defendants' counsel appeared at the hearing by telephone. At the hearing, and thus in an untimely manner, Plaintiff submitted 136 pages of supplemental authorities. The Court took Defendants' motion under submission, and granted Defendants leave to file a supplemental brief to respond to the new authorities submitted by Plaintiff at the hearing.

On July 6, 1995, prior to the hearing, Plaintiff filed an opposition to Defendants' motion. This opposition exceeded the page limit for opposition papers by five pages See USDC S.D. Cal. Local Rule 7.1(h). On September 27, 1995, also prior to the hearing the court received Defendants' untimely reply. Defendants' reply was neither filed nor considered by the Court.

Factual Background

On May 15, 1995, Plaintiff G. Balasubramani filed this Complaint against Defendants Merrill Lynch, William Schreyer, John Kutasi, John Peschong, and Burt Rosen, alleging fraud on the part of Defendants, and seeking to vacate a National Association of Securities Dealers ("NASD") arbitration award entered in the matter of Balasubramani v. Merrill Lynch et al., NASD Case No. 93-02674 (July 1994).

In December 1986, Plaintiff opened a securities account at Merrill Lynch's office in Hollywood, California. In 1987, Plaintiff placed his accont on margin. On October 19, 1987, the stock market crashed 508 points. Plaintiff's account lost value, though Plaintiff alleges his account had been losing money prior to the market crash.

In July 1993, Plaintiff filed a Statement of Claim for arbitration with the NASD. Plaintiff named Merrill Lynch, John Kutasi, John Peschong, William Schreyer, and Burt Rosen (all of the named Defendants in this lawsuit) as Respondents in his claim. Plaintiff alleged, among other things, that Merrill Lynch brokers engaged in unauthorized trading and unauthorized use of margin. Plaintiff also alleged that the investments at issue were unsuitable for him, that Merrill Lynch failed to supervise its brokers, and that Merrill Lynch employees failed to follow Plaintiff's instructions.

On June 22 and 23, 1994, the arbitration hearing on Plaintiff's claim took place in Los Angeles before a panel of three arbitrators appointed by the NASD. The arbitrators issued their award on Plaintiff's claim in July 1994. On July 13, 1994, the NASD sent copies of the award to each of the parties.

Plaintiff filed the instant Complaint/Petition to Vacate on May 15, 1995. Defendants move to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1).

Discussion

Rule 12(b)(1) provides for dismissal for lack of subject matter jurisdiction. The Court incorporates Rule 12(b)(1) by reference. The party seeking to invoke the jurisdiction of the federal court has the burden of establishing that jurisdiction exists. Scott v. Breeland. 792 F.2d 925, 927 (9th Cir. 1986).

On a motion to dismiss purusant to Rule 12(b)(1), the standards that must be applied vary according to the nature of the jurisdictional challenge. ITSI T.V. Prods. Inc. v. California Auth. of Racing Fairs, 785 F.Supp. 854, 857-58 (E.D. Cal. 1992), modified on other grounds, 3 F.3d. 1289 (9th Cir. 1993). If the challenge to jurisdiction is a facial attack, i.e., the defendant contends that the allegations of jurisdiction contained in the complaint are insufficient on their face to demonstrate the existence of jurisdiction, the plaintiff is entitled to safeguards similar to those applied when a Rule 12(b)(6) motion is made. Id. The factual allegations of the complaint are presumed to be true, and the motion is granted only if the plaintiff fails to allege an element necessary for subject matter jurisdiction. Id. A complaint will be dismissed for lack of subject matter jurisdiction if (1) the cause does not "arise under" any federal law or the United States Constitution, (2) there is no case or controversy within the meaning of that constitutional term, or (3) the cause is not one described by any jurisdictional statute. Id.

If the challenge to jurisdiction is made as a "factual attack" or "speaking motion," attacking the truth of the jurisdictional facts alleged by the plaintiff, a different set of standards must be applied. Thornhill Publishing Co. v. General Tel. & Elecs. Corp., 594 F.2d 730, 733 (9th Cir. 1979). Where the jurisdictional issue is separable from the merits of the case, the district court may, under certain circumstances, hear evidence regarding jurisdiction and rule on that issue prior to trial, resolving factual disputes where necessary. Id. Where the jurisdictional issue and the merits are intertwined, the court must employ the standard applicable to a motion for summary judgment in disposing of the motion to dismiss for lack of subject matter jurisdiction Trentacosta v. Frontier Pac. Aircraft Indus. 813 F.2d 1553, 1558 (9th Cir. 1987).

Here, Defendant's motion to dismiss for lack of subject matter jurisdiction attacks the sufficiency of Plaintiff's jurisdictional pleadings. Thus, the factual allegations of Plaintiff's Complaint will be presumed to be true, and Defendants' motion granted only if Plaintiff fails to allege an element neceessary for subject matter jurisdiction.

NASD held the arbitration hearing in this matter pursuant to the Federal Arbitration Act, 9 U.S.C. sec 1 et seq. (West 1995). The Federal Arbitration Act does not confer independent jurisdction on the federal courts. Pacific Reinsurance Management Corp. v. Ohio Reinsurance Corp. 935 F.2d 1019, 1021 (9th Cir. 1991); General Atomic Co. v. United Nucleear Corp., 655 F.2d 968, 969 (9th Cir. 1981) cert.

denied, 455 U.S. 948 (1982), reh'g denied, 456 U.S. 939 (1982). Thus, Plaintiff must demonstrate an independent ground for jurisdiction in federal district court.

Plaintiff fails to allege any grounds for jurisdiction in this Court. Plaintiff raises no claim, under a specific statutory grant. Thus, there is no jurisdiction over this matter under a specific statutory grant. See 28 U.S.C. sec. 1330. No federal question is alleged in Plaintiff's Complaint. Thus, there is no jurisdiction over this matter based on a federal question. See 28 U.S.C. sec. 1331. Finally, Plaintiff, a California resident, does not allege jurisdiction over this matter based on diversity. Moreover, as Defendants presented declarations demonstrating that three of the four individual named Defendants reside in California, Plaintiff could not have successfully alleged diversity jurisdiction, had he attempted to do so. See 28 U.S.C. sec. 1332. Thus, as Plaintiff has failed to allege any ground for federal court jurisdiction over this matter, this Court does not have jurisdiction over Plaintiff's claim.

In addition, Plaintiff's claim is barred by the applicable statute of limitations. Section 12 of the Federal Arbitration Act provides: "Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered." 9 U.S.C. sec. 12 (West 1995). A party to an arbitration award who fails to comply with the statutory precondition of timely service of notice forfeits the right to judicial review of the award. Piccolo v. Dain, Kalman & Quail, Inc., 641 F.2d 598, 600 (8th Cir. 1981) (per curiam); Carpenters 46 N.Cal. Counties Conference Bd. v. Meddles, 535 F. Supp. 775, 777-78 (N.D. Cal. 1981); see also Cullen v. Paine, Webber, Jackson & Curtis Inc., 853 F.2d 851, 853-54 (11th Cir. 1989) (per curiam), cert. denied, 490 U.S. 1107; LaFarge Conseils et Etudes, S.A. v. Kaiser Cement & Gypsum Corp. 791 F.2d 1334 (9th Cir. 1986); Communications Workers of America v. Pacific Tel. and Tel. Co., 462 F.Supp. 736, 737-39 (C.D. Cal. 1978).

Here the NASD arbitration award was mailed to the parties accompanied by a letter dated July 13, 1994. Plaintiff filed this lawsuit seeking to vacate the award on May 15, 1995. In a letter accompanying Plaintiff's Complaint, he acknowledges having received the arbitration award by at least July 20, 1995. Thus, almost ten months had elapsed from the time of Plaintiff's receipt of the arbitration award to the time of filing of this lawsuit. Plaintiff filed this lawsuit seven months too late.

Plaintiff argues, however, that Section 12 begins to run not at filing or delivery of the award, but rather when Plaintiff has received all tapes, transcripts, and records of the arbitration proceedings. Plaintiff provided no legal authority for this contention in his opposition, and legal authority known to the court which addresses Section 12 does not support Plaintiff's contention.

At the motion hearing, Plaintiff argued anew that the statute of limitations is tolled when the NASD fails to comply with certain of its procedures. Plaintiff alleged that the NASD award should be vacated because the NASD allegedly failed to comply with NASD Code of Arbitration Procedure sec. 37 (requiring that a record of proceedings be kept) and Rule 41(e) (requiring that the award be dated.) Plaintiff asserted that the NASD record of the arbitration proceedings is incomplete, and that the award letter was not dated, though the cover letter that accompanied it was clearly dated.

The Court asked Plaintiff at the hearing for six cases out of the 136 pages submitted by Plaintiff that best support Plaintiff's argument that the statute of limitations is tolled under the circumstances Plaintiff alleges. The Court took Defendants' motion under submission, and granted Defendants leave to file a supplemental brief to respond to the six cases identified by Plaintiff.

Of the six cases Plaintiff cited, none mandate denial of Defendants' motion to dismiss for lack of subject matter jurisdiction. Plaintiff first directed the Court to Haines v. Kerner, 404 U.S.519, 92 S. Ct. 594 (1972), a case where the Supreme Court noted that the allegations of the pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers. Id. at 596. Haines provides no support for Plaintiff's contention that the statute of limitations has not run in this case. Here, since Plaintiff is proceeding pro se, Plaintiff's pleadings are held to a less stringent standard than those drafted by lawyers. However, Plaintiff still must allege jurisdiction in this Court. Held to any standard, Plaintiff's complaint cannot do so.

Next Plaintiff directed the Court to Volt Info. Sciences, Inc. v. Board of Trustees of the Leland Stanford Junior Univ., 109 S. Ct. 1248 (1989). In Volt, the Supreme Court held that application of the California Arbitration Act was not preempted by the Federal Arbitration

Act in a case where the parties agreed that their arbitration agreement would be governed by California law. Volt is inapplicable here as Plaintiff has not raised an issue regarding applicable law.

Plaintiff then directed the Court to American Guaranty Co. v. Caldwell, 72 F.2d 209 (9th Cir. 1934), and J.M. Owen Bldg. Contractors, Inc. v. College Walk, Ltd., 400 S.E. 2d 468 (1991). Neither of these cases supports Plaintiff's claim that Section 12 does not apply to him under the facts of this case.

J.M. Owen is a decision from the Court of Appeals of North Carolina turning on that court's interpretation of North Carolina General Statute sec. 1-567.9 There, the court held that service of notice of arbitration award by regular mail, rather than personal delivery or registered mail as required by North Carolina General Statute sec. 1-567.9, did not commence running of the ninety-day period for vacating, modifying, or correcting arbitration awards. Here, however, the Federal Arbitration Act governs the case. Furthermore, Section 12 does not provide for any method by which an arbitration award must be served or delivered in order to commence running of the three-month period. Thus, Plaintiff may not avoid Secion 12 on the ground that the NASD award was delivered to him by United States Mail.

In American Guaranty, though the petition to vacate was filed more than three months after the award, the court vacated an arbitration award due to arbitrator fraud and bias. 72 F.2d at 211. Here, however, the errors of which Plaintiff complains do not approach the egregiousness of the bias exhibited by the arbitrator in American Guaranty who had a business relationship with one of the parties. Moreover, the court provided no authority for its decision, and no court has ever relied upon it for the proposition Plaintiff asserts.

Plaintiff also asserted that Mueske v. Piper, Jaffray & Hopwood, Inc. 859 P.2d 444 (Mont. 1993), and Szuts v. Dean Witter Reynolds, Inc. 931 F.2d 830 (11th Cir. 1991) support his contention that alleged procedural errors by the NASD toll the statute of limitations in this case. In Mueske, the Supreme Court of Montana held that a "predispute arbitration clause" contained in Piper, Jaffray's Margin Agreement with a customer was invalid where the brokerage house failed to comply with New York Stock Exchange and NASD rules requiring that the investor

acknowledge the arbitration agreement and be provided a copy of the agreement. Mueske, 859 P.2d at 450. Here, Plaintiff raises no issue regarding the validity of the predispute arbitration agreement.

In Szuts, the court granted a petition to vacate on the grounds that the arbitrators violated the provisions of the arbitration agreement, which required arbitration before at least three arbitrators, when they proceeded with only two arbitrators. Szuts, 931 F.2d at 831-32. Plaintiff alleges no such extreme irregularity in the NASD proceedings in his case. In addition, Szuts offers no guidance with respect to Section 12, and thus does not bear on Plaintiff's argument that Section 12 does not apply to his case.

Finally, Plaintiff presented Carr v. American Ins. Co., 152 F.Supp. 700 (E.D. Tenn, 1957) to support his contention that Section 12 does not bar his claim. In Carr, the court granted defendants' motion for summary judgment in a case where plaintiff prematurely sought to recover on an alleged arbitration award. The parties' arbitration agree-ment required that the arbitrators' award state separately the actual value and loss to each item, and be signed by two of the arbitrators. The award plaintiff sought to enforce failed to state separately the actual cash value and loss to each item and was not signed by two arbitrators. Applying Tennessee law, the court held that a valid award had not been issued, and granted defendants' motion for summary judgment. Id. at 702.

In sum, none of the authority provided by Plaintiff at the hearing supports his contention that Section 12 does not bar his claim. The Court finds that Plaintiff has failed to satisfy his burden of showing that this Court has subject matter jurisdiction over this action. Section 12 of the Federal Arbitration Act mandates that actions seeking to vacate arbitration awards be filed within three months of filing or delivery of the award. The almost ten month delay between Plaintiff's receipt of the arbitration award and the filing of this lawsuit exceeds the required time period by almost seven months. As Plaintiff fails to allege any other ground for jurisdiction in this court, Defendants' motion to dismiss for lack of suject matter jurisidiction is GRANTED with prejudice.

As a result, the Court need not reach the parties' arguments pertaining to Section 10 of the Federal Arbitration Act and to the substance of Plaintiff's claim for vacation of the arbitration award.

IT IS HEREBY ORDERED that Defendants' motion to dismiss Plaintiff's complaint for lack of subject matter jurisdiction is GRANTED with prejudice.

DATED: 10.17.95

"s/Judith N. Keep, Chief Judge."
United States District Court

cc

G. Balasubramani
40413 Yardley Court
Temecula CA 92591

Robert H. Logan
Stacey M. Garrett
Keesel, Young & Logan
A Professional Corporation
400 Oceangate
P.O. Box 1730
Long Beach, CA 90801-1730

APPENDIX 'F'

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
WESTERN REGION

G. BALASUBRAMANI,	)	Case No. 95-0628-K(AJB)
Plaintiff	)	San Diego, California
vs.	)	Monday, October 2, 1995
MERRILL LYNCH, et al.,	)	
Defendants	)	
	)	

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE JUDITH N. KEEP
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff:	G. Balasubramani, Pro Per 40413 Yardley Court Temecula, California 92591 (909) 699-6644
For Defendants:	STACEY GARRETT, ESQ. Keesal, Young & Logan 310 Golden Shore Box 1730 Catalina Landing Long Beach, California 90801 (310) 436-9051
Court Recorder: Transcription Service:	Renee Green Peggy Schuerger Ad Hoc Reporting 121 Broadway, Suite 633 San Diego, California 92101 (619) 236-9325

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

SAN DIEGO, CALIFORNIA, MONDAY, OCTOBER 2, 1995.

(Call to order of the Court.)

MR. BALASUBRAMANI: My name is Balasubramani, your Honor.

THE COURT: You may step forward, sir. Counsel is out of town and we're going to call them and put them on the phone during this ruling. So if you'll come up to the podium.

MR. BALASUBRAMANI: Can I have my wife come up here?

THE COURT: Yea, but you may not speak since it appears to be his case. But if you'd like to have her sit with you, you may. But I need you to stand up at the podium if you've got anything you're going to say to me.

MR. BALASUBRAMANI: Good morning, your Honor.

(Pause.)

THE COURT: Good morning, sir. We're trying to connect counsel, Mr. (sic) Garrett. (Pause.)

Mr. Balasubramani -- would you pronounce your name Balasubramani?

MR. BALASUBRAMANI: Balasubramani, just like the way it is spelled there.

THE COURT: Balasubramani.

MR. BALASUBRAMANI: Yeah.

THE COURT: We -- Ms. Garrett wants to appear with us this morning by telephone in an effort to save money for the client. And we did say that we would do it by speaker phone, but the phone, as you can tell, is acting up at this point. Let me take the next matter, see if we can get somebody to come over here and get this phone squared away; all right?

MR. BALASUBRAMANI: Can I leave my papers here?

THE COURT: Of course you may. That's fine. You can even stay there if you want.

(Recess.)

THE COURT: Good morning. Ms. Garrett, Mr. Balasubramani is in court and he's announced his presence. We apologize for the inconvenience. We couldn't get this phone to work.

Mr. Balasubramani, do you want to state your presence and then I'll ask Ms. Garrett to state hers, too, to make sure you can hear each other.

MR. BALASUBRAMANI: Yes. My name is Balasubramani. Do I say anything more or --

THE COURT: At this point that's sufficient.

MR. BALASUBRAMANI: Oh, okay.

THE COURT: Ms. Garrett, and you're present also?

MS. GARRETT: Thank you, your Honor. Stacey Garrett with Keesel, Young & Logan in Long Beach, California representing the Defendants and the moving parties, Merrill Lynch Pierce Fenner & Smith, Inc., and at this time may I express my thanks to the Court for accommodating me and allowing me to appear by telephone. I appreciate that very much.

THE COURT: Sure. Okay. I have read and considered the papers. This is the Defendant's motion to dismiss and opposition to the petition to vacate the arbitration award. Ms. Garrett, do you have anything you want to add to your papers at this time?

MS. GARRETT: Your Honor, may I inquire if the Court received Merrill Lynch's reply brief?

THE COURT: Yes.

MS. GARRETT: Then I would state that the position is adequately addressed in the papers. Very simple. The first point is that the court lacks jurisdiction to hear this dispute. There is no federal or -- federal question jurisdiction or diversity jurisdiction.

Even if the Court were to dismiss the three individual Defendants and therefore diversity would exist, the petition to vacate is untimely under the Federal Arbitration Act. It was filed well beyond the three months contemplated by Title 1, Secion 2, and the Act does not provide for tolling for any reason. So Merrill Lynch would ask that the Court dismiss the petition to vacate on that basis.

THE COURT: Mr. Balasubramani, how would you get around the three-month statute?

MR. BALASUBRAMANI: There are case laws in matters of pro se complaint, pleading amendments, and frivolouly enforcing terms of arbitration agreeements. I don't know the standard to cite cases, so I have attached copies. I have prepared a brief, mostly of the quotations from court decisions. It will take about 25 minues to present orally.

THE COURT: No, sir. I'm sorry. I can't do that. That's the reason we let you file the opposition. I really only have an opportunity at this time to see if you have anything you want to add to the papers.

MR. BALASUBRAMANI: But those are the court decisions I have here.

THE COURT: Well, you filed an opposition. Is that what you're trying to read, is the opposition you previously filed?

MR. BALASUBRAMANI: No. This one I just took the research. I went and did all the research from the law library and I brought a lot of Supreme Court decisions and all those things here.

THE COURT: Well, Mr. Balasubramani, that would be so late. Your opposition was filed in July.

MR. BALASUBRAMANI: Yeah, but at that time --

THE COURT: And that was too long by five pages. The whole point is to allow everybody to brief it and then for me to rule today, not to submit all these cases at this point.

MR. BALASUBRAMANI: I can -- I can give you one minute because I don't have to -- I mean, I am not sure how exactly to do, but I can just read Supreme Court decisions and Eleventh Court decision and I'll just in two minutes and stop going --

THE COURT: All right. Why don't you do that.

MR. BALASUBRAMANI: You want me to just read that?

THE COURT: Why don't you do that.

MR. BALASUBRAMANI: Okay. I'll just quickly read --

THE COURT: You say these say that the 90 days does not apply to you?

MR. BALASUBRAMANI: That's right.

THE COURT: All right. What are the --

MR. BALASUBRAMANI: It says right here. Okay? It's like -- first, I will just talk about the pro se. I feel a great sense of relief reading:

"Under the allegations of a pro se complaint, which we hold less stringent standards than formal pleadings written by lawyers." It's from Supreme Court in Haynes v. Kerner (ph).

THE COURT: What's the cite?

MR. BALASUBRAMANI: I got the whole -- I've got copies of it. If I may approach the bench, I will give this whole thing to you.

THE COURT: Yes. Go ahead.

MR. BALASUBRAMANI: I have two copies. This is one and this is one.

THE COURT: Just give me your best cases because this is really much, much, much too late. What are you saying are the cases that you're relying on? Haynes v. Kerner; is that right?

MR. BALASUBRAMANI: Haynes v. Kerner, is for the pro se pleading.

THE COURT: All right.

MR. BALASUBRAMANI: Then the -- there is the next case is --

THE COURT: But which ones do you say cause the statute of limitations not to apply to you?

MR. BALASUBRAMANI: Oh, okay. See, what they are talking about is they are saying like the Supreme Court says -- see, they are saying you don't go to the -- okay. Here it is. The Bemoutier (ph) case talks about allowing an amendment to motions.

THE COURT: Now, here is my question. You've got -- you just handed up to me 132 pages of cases and plus some points and authorities.

MR. BALASUBRAMANI: Okay. Here --

THE COURT: What I want to know is looking at this 132 pages of cases, are there any of these cases that you say stand for the

proposition that the statute of limitations, that 90 days, does not apply?

MR. BALASUBRAMANI: Yes.

THE COURT: Which ones? 'Cause that's really the key issue.

MR. BALASUBRAMANI: Okay. What the Court is saying is:

"Just as they may limit by contract the issues which they will arbitrate, so too may they specify by contract the rules under which the arbitration will be conducted. By permitting the courts to rigorously enforce such agreements according to their terms, we give effect to the contractual rights and expectations of the copies." It's Volt Information Sciences v. Borad of Trustees.

THE COURT: Okay. Now, wait a minute. Let me make sure that you understand my question because this statute of limitations issue has been brought up a lot. It was brought up by counsel informally to you a long time ago and one of the attorneys that you contacted brought it up, too, and it's been in these pleadings which have been before me for some months. Basically, the law says if there is a motion to vacate, modify, or correct an award under the Arbitration Act, it must be served on the adverse party or his or her attorney within three months after the award is filed or delivered. Now, how do you get around that?

MR. BALASUBRAMANI: Okay. See, what -- quite a few of these cases talks about is first and foremost you have to perform the rules and regulations and the arbitration needs established. That's what consistently the courts all say. Like they specify by contract the rules under which arbitrations will be conducted.

THE COURT: Right.

MR. BALASUBRAMANI: The rules of NASD is controlling law.

THE COURT: Right.

MR. BALASUBRAMANI: "Specific provisions in the arbitration agreement take precedence. Ii's imperative that the integrity of the process be zealously safeguarded."

THE COURT: Okay. Now, how --

MR. BALASUBRAMANI: And like in another case, it says --

THE COURT: Wait, wait, wait. I -- stop. I understand that's the law. Are you saying your arbitration agreement said if you were unhappy with the arbitrator's award, that you would have more than 90 days to file a lawsuit?

MR. BALASUBRAMANI: No. But what the arbitration said was that we have to go by the rules and regulations of the process because there are -- consistently there are cases where any time they did not go -- follow the procedure, it's vacated. Because they said the process is more important than -- in fact, the Supreme --

THE COURT: But don't you have to draw it to a court's attention within 90 days that you're unhappy?

MR. BALASUBRAMANI: Well, I -- well, I had no way of doing anything. I was a pro se. I kept on writing letters to them or asking for tapes and they did not give me anything, and there is nothing I can do about it. I couldn't come to the court and say, I want the record. Look at the problems I am having right now. I had no piece of paper to come here and do anything. I kept on writing -- you know, every month I kept on writing and every month I called them and spoke to them.

THE COURT: Okay. But wait a minute. Here -- let me read you this law because this is the critical thing that I'm concerned about.

"Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed. A party to an arbitration award who fails to comply with timely service forfeits the right to judicial review."

MR. BALASUBRAMANI: Okay. But my -- your Honor, that's when they have got a proper contract confirmed. In fact, it says you can have this one:

"Vacation of arbitrator's award is justified where umpire was improperly appointed and partial to successful party, though a motion to vacate was not filed within three months after award."

THE COURT: Okay. Now, tell me -- which case are you relying on?

MR. BALASUBRAMANI: American Guaranty Company v. Caldwell.

THE COURT: Which one?

MR. BALASUBRAMANI: American Guaranty Company v. Caldwell. The pages -- if you look on page 100 of the copy I gave you, you'll find.

THE COURT: Okay.

MR. BALASUBRAMANI: It's a specific copy.

THE COURT: Okay. American Guaranty v. Caldwell at page 100.

MR. BALASUBRAMANI: Caldwell.

THE COURT: Okay.

MR. BALASUBRAMANI: Then there is another one where they say the 90 days doesn't even start because they did not follow the procedure, which is Piper -- no, this one:

"Service of the award must be by either personal delivery or registered mail. Service of the award of arbitration in the instatnt case by regular mail did not commence running of the 90-day period." In Owen Building Contractors v. College Walk. It's 400 S.E.2d 468, North Carolina Appeals Court (1991).

THE COURT: Okay. So of your 17 cases on this court's decision list, you're relying on number seven and number 15?

MR. BALASUBRAMANI: Pardon me?

THE COURT: You can look at your court decision.

MR. BALASUBRAMANI: Yeah, court decision. Yes.

THE COURT: Okay. Now, on this 90-day period, you're relying on which cases? Number seven and number 15.

MR. BALASUBRAMANI: Seven -- yeah, seven and 15.

THE COURT: Any others?

MR. BALASUBRAMANI: But that's not primarily what I am saying. What I am saying is that once you have a contract, until you perform the contract, generally you start getting outside it. Specifically, they say you can have -- what's the point of saying the contract rules take precedence? The Supreme Court says that contract rules take precedence and we are going to rigorously enforce the contract rules.

THE COURT: I understand. But wait a minute. Are there any other cases on which you rely -- seven and 15 -- on the 90 days?

MR. BALASUBRAMANI: That's the only ones -
THE COURT: Okay.

MR. BALASUBRAMANI: -- I can think of because I was going
THE COURT: Now, --

MR. BALASUBRAMANI: -- by the rules of the --

THE COURT: Okay. I understand. Now, why do you say then -- what is the breach of contract?

MR. BALASUBRAMANI: Breach of contract is I'm supposed to get copy of tapes. They are supposed to put the date in there.

THE COURT: Where is that in the contract?

MR. BALASUBRAMANI: It says -- I wish I -- you know, I couldn't go to the law library or anything. It's all there in the attachment. All the contract is there.

THE COURT: Mr. Balasubramani --

MR. BALASUBRAMANI: Yeah.

THE COURT: -- first of all, your opposition was too long and, secondly, you're coming in on the day of the oral hearing and you're submitting well over a hundred pages of cases. Now, this is much too late. I'm trying to simplify this so that I can get you through and then I'll let -- I have to let counsel for her side get an opportunity to respond to this. And so I'm trying to understand your theory. This is much, much, much too late.

MR. BALASUBRAMANI: This one I said we have -- "We agreed that the arbitration will be conducted in accordance with the Constitution, by-laws, rules, regulations, and/or NASD Code of Arbitration procedures of the sponsoring orgaization."

THE COURT: Right.

MR. BALASUBRAMANI: And it is signed.

THE COURT: Right.

MR. BALASUBRAMANI: So when you do not go with the Code of Arbitration procedures, that means the contract is not complete.

THE COURT: What was not complied with?

MR. BALASUBRAMANI: Section 41(e) says that they have to date -- when they signed the award, they are to put the date. The date is not there.

THE COURT: What date? What date?

MR. BALASUBRAMANI: The date they signed the award. It says -- 41(e) says --

THE COURT: Did you have an attorney prepare these papers?

MR. BALASUBRAMANI: No. I did not.

THE COURT: Who prepared these papers?

MR. BALASUBRAMANI: Everything is mine.

THE COURT: Huh?

MR. BALASUBRAMANI: I prepared these papers.

THE COURT: All of them?

MR. BALASUBRAMANI: Yes.

THE COURT: All right.

MR. BALASUBRAMANI: I went to the --

THE COURT: All right.

MR. BALASUBRAMANI: -- law library and it's all written there and they told me what to do and gave me all the information.

THE COURT: Okay. So now what are you saying is the --

MR. BALASUBRAMANI: They did not perform Section 37 where they are supposed to give me record of proceedings.

THE COURT: Wait. They're supposed to give you what?

MR. BALASUBRAMANI: Record of proceedings.

THE COURT: And you're saying that causes the 90 days not to run?

MR. BALASUBRAMANI: Yeah. They did not even give me within 90 days the record of proceedings. I kept writing to them. I --

THE COURT: Okay. Just wait. You are to answer my questions.

MR. BALASUBRAMANI: Yes, ma'am.

THE COURT: They did not give you a record of proceedings --

MR. BALASUBRAMANI: Yes.

THE COURT: Violating Rule 37?

MR. BALASUBRAMANI: Yes.

THE COURT: And --

MR. BALASUBRAMANI: And they did not -- on 41(e), they did not put the date when they put the decision and they did not put this up in the summary of findings the issues.

THE COURT: The what?

MR. BALASUBRAMANI: The summary -- in the summary, the case summary.

THE COURT: They did not put --

MR. BALASUBRAMANI: They are supposed to put all the issues.

THE COURT: All right. Okay.

MR. BALASUBRAMANI: They did not put all the issues.

THE COURT: All right. So now what case do you rely on any of these cases that says those are material issues?

MR. BALASUBRAMANI: Well, for instance --

THE COURT: Just tell me the cases. Just name 'em. Of those 17 --

MR. BALASUBRAMANI: Well, all these cases that I find, they are all --

THE COURT: I'm not going to read 17 more cases. Give me your two or three best, maximum three, on this issue.

(Pause.)

Do you need a minute?

MR. BALASUBRAMANI: No. I'm just confused at this point

what I am supposed to be doing because --

THE COURT: All right. Now, --

MR. BALASUBRAMANI: -- because I --

THE COURT: Look, we briefed these in advance. As you know, this was not to come up with a whole bunch of -- 132 pages of cases, plus you've come up with over 21 pages of new argument. Now, that's not fair to the other side. That is the reason we have the motion date, we schedule -- the rules -- you're relying on rules. Now, let me talk to you a minute. The rules are very clear. Twenty-eight days before the motion date the movant files. Fourteen days the opposition, and so on. Now, I point that out because you're grossly expanding the authority of our rules about the amount of paper and the time.

I am trying to give you some leeway. I understand you're presenting two arguments. The first argument is that there was a failure to comply with the contract and you're saying it's because there was a violation of Rule 37 about the record of the process that has to be given to you and under 41(e) that it has to be dated and a summary of issues.

So I'm saying to you do you have any cases that say if either one of those two terms are not complied with, either the record of the proceeding given to you or, under Rule 41(e), that the award has to be dated and there has to be a summary of issues, that that is a material violation of your arbitration agreement?

And the second issue is you said that if there is a failure to comply, the 90 days doesn't run, and you gave me your two cases on that. So all I'm trying to find out is if there is a violation of the fact that you were to be given a record of the proceedings and you weren't, or under 41(e) that a decision is supposed to be dated and it wasn't, or there was supposed to be a summary of issues, that those omissions are material, caused the contract not to be fulfilled and therefore you don't have to have the 90 days? So that's the question.

MR. BALASUBRAMANI: See --

THE COURT: What cases say that?

MR. BALASUBRAMANI: Not specifically that, but all the other cases similarly were adjusting, saying -- they said, Three parties have to sign and only one party signed, so they said -- you know, they threw it out.

THE COURT: Well, give me your three best cases then on which -- that I would rely and opposing counsel would respond.

(Pause.)

MR. BALASUBRAMANI: Can you give me five minutes so I can sit and rest and just to completely --

THE COURT: Yes. You may sit down and do that. Counsel --

MS. GARRETT: Yes, your Honor.

THE COURT: -- what is your pleasure? Do you feel prepared to respond orally to what he's saying or do you need a chance to supplementally respond?

MS. GARRETT: Well, I'd like to say that I'm prepared to do it orally. Unfortunately, since I don't know what Mr. Balasubramani is presenting to the Court, it's a little difficult to do. Perhaps I can respond orally and the Court might reflect on what Mr. Balasubramani is presenting (indiscernible).

THE COURT: Sure. I would ask that you then just hold on for a few minutes.

MS. GARRETT: Sure. I'd be happy to.

THE COURT: Okay.

(Pause.)

MR. BALASUBRAMANI: Madame, actually -- your Honor, the Volt Information System Sciences says they are free if they wish --

THE COURT: Which one?

MR. BALASUBRAMANI: Volt Information Sciences.

THE COURT: Okay.

MR. BALASUBRAMANI: It's on page 27.

THE COURT: All right.

MR. BALASUBRAMANI: "They are free if they wish to write an agreement outside the coverage of the FAA. Such an agreement will permit a state rule otherwise preempted by the FAA to go into arbitration." This is from Supreme Court.

THE COURT: Okay. What other case do you rely on? If you don't have two more, that's fine. But the point is you're saying that these rules were violated and that then causes the 90 days not to run.

MR. BALASUBRAMANI: That's right.

THE COURT: So, I'm trying to find out where it would -- what cases would support the fact that these are material rules or that they have to be complied with and, if they aren't, the 90 days doesn't run.

MR. BALASUBRAMANI: Well, basically, what I went through was they were all procedural errors. They were all just procedural; they did not follow procedure.

THE COURT: Okay. Do you have anything that says those are the procedural errors that would cause the time not to run? I know I've got Volt on that issue.

MR. BALASUBRAMANI: Well, specifically talking about I got only two of them which that's specifically the 90 days. But the gist of it was that the arbitration rules take precedence over other things. That's what they are saying. Until you --

THE COURT: Okay, okay, okay. I understand your theory. I'm just asking for the cases. And if you don't have any more, that's --

MR. BALASUBRAMANI: Take precedence -- the one that says it takes precedence is -- in fact, it says: "NASD rules are the (indiscernible)." In the (Montana 1993) case, it says --

THE COURT: Which one? Which one?

MR. BALASUBRAMANI: Museke v. Piper Jaffray.

THE COURT: Just which number? Oh, I see. Number 4. Okay.

MR. BALASUBRAMANI: It says: "NASD has controlling law."

THE COURT: Okay.

MR. BALASUBRAMANI: In the same one -- in Szuts v. Dean Witter Reynolds --

THE COURT: Okay.

MR. BALASUBRAMANI: -- It says: "The specific provisions in the arbitration agreement take precendence."

THE COURT: Are those the three cases? Okay. So basically what you're saying is the rules are important and your cases for that are Volt, Mueske, and Szuts. Then you're saying that the rules were not complied with and that's Rule what? -- 37 of what?

MR. BALASUBRAMANI: Yeah, Rule 37 and 41.
THE COURT: Of what?

MR. BALASUBRAMANI: Of NASD Code of Arbitration Procedure.

THE COURT: NASD. And, therefore, you are saying that the 90 days does not run.

MR. BALASUBRAMANI: Yes.

THE COURT: And for that, you're also relying on Owen and American Guaranty?

MR. BALASUBRAMANI: Yes. That's right.

THE COURT: Okay. Now, let me ask counsel then if she wants to respond or she needs time to brief that?

MS. GARRETT: Your Honor, well, Tile 9, Section 2 is very

clear. It says ninety days from the -- that: "Notice of a motion to vacate must be served upon the adverse party within three months after the award is filed or delivered. Legal efforts under the statute should be ruled as the arbitration or the underlying procedure."

One of the basic premises of the award was that Rule 41 was not complied with. Rule 41 requires that the award contain the names of the parties, the names of counsel, a summary of the issues, the damages and other relief requested, a statement of the issues resolved, the names of the arbitrators, the date the complaint was filed, the number of dates of the hearing sessions, the location of the arbitration, and the signatures of the award -- of the arbitrator concurring in the award.

I FAX'd to Merrill Lynch in a paper a copy of the award. Every single one of these requirements has been met. I'm at a loss to determine what it is that Mr. Balasubramani claims.

THE COURT: Wait a minute. What do you say was claimed.

MS. GARRETT: The only argument that it could be is that there is no date on the award themselves, but the award came with a cover letter to Mr. Balasubramani that was dated July 13, 1994. There is no question that he received that. He wrote a letter to the NASD in November of '94 in which he referred to his July 20, 1994 letter stating, "I'm unhappy with the award," etc., etc. So what he seeks is not an issue. It's not as if this is something that was lost in the mail.

There is no way that the absence of this date on one of the award forms is material, and I don't have the authority that you have before you, but I certainly haven't seen any. To the exent that the argument is that this procedural error somehow renders the arbitration award invalid or somehow renders it subject to the motion to vacate, the Federal Arbitration Act contains very specific grounds upon which the -- an arbitration award may be vacated.

It is corruption, arbitrator corruption, undue meaning, failure to receive evidence, or failure to grant a reasonable continuance. This does not fall into any of those categories.

And finally, the law is very clear that even a factual error or a

procedural error on behalf of the arbitrator, to the exent it does not fall into one of these categories as recognized by the Federal Arbitration Act, is not sufficient to vacate the arbitration award.

THE COURT: What -- first of all, what case would you rely on -- what's the cite of the statute that says it's only those grounds to vacate the award?

MS. GARRETT: Sure. Let me find that for you. It's Palimari (ph), Section 10, provides the four grounds upon which an arbitration award may be vacated.

THE COURT: And then you say there's cases that say that that's the only grounds on which you can vacate -- not procedural errors? Is that right?

MS. GARRETT: It's limited to those grounds. The tort rule is very limited. The arbitrator's award is entitled to great deference. I have some state law cases interpreting the California Arbitration Code. I do not have at my fingertips the Federal --

THE COURT: Okay.

MS. GARRETT: -- Arbitration Code interpreting the Federal Arbitration Act, but they are modeled after one another.

THE COURT: All right. What about this record of the proceeding, Rule 37?

MS. GARRETT: Rule 37 requires that the NASD keep a verbatim record either by tape recording or stenographic reporter of the proceedings. The parties are entitled to a copy of the record.

Mr. Balasubramani claims that the award should be vacated because he's been unable to obtain a complete copy of the record. I don't -- I don't know whether he's been able to obtain a complete copy of the record or not, but those two provisions are separate and independent.

The NASD's obligation to keep a record is independent of the arbitrator's obligations and duties to issue an award. The failure of that

record to be present does not disable the arbitrator from listening to the evidence which was presented to them at the two days of hearing of this matter in June and reflecting upon it and issuing the award that they believed appropriate.

THE COURT: Do you have any case law that deals with the independence of the arbitrator's award from the obligation of the NASD to keep a record?

MS. GARRETT: Do I have any authority -- I'm sorry. What, your Honor?

THE COURT: You indicated that the obligation of the NASD to keep a record is independent from the arbitrator's award to render a decision. Other than common sense, are you saying that there's any case law that would support that?

MS. GARRETT: I have no case law that says that. We are -- these rules are in the NASD's Code of Arbitration Procedure. Secion 34 is the section that we're talking about. Section 14, I believe -- I'm sorry -- it must be 41 -- is the one that requires the award. But there's no indication in the Code of Arbitration Procedure that requires those obligations are independent upon one another.

THE COURT: Okay. Mr. -- do you feel you need a chance to respond to these five cases upon which he's relying?

MS. GARRETT: I'm sorry? Could I have the opportunity?

THE COURT: Yes. Do you feel you need to submit any evidence or do anything in writing as to these five cases?

MS. GARRETT: If Your Honor is inclined to deny the motion to vacate the award, I would ask for the opportunity to review those cases and to reply to them.

THE COURT: I'm not sure. Frankly, I have to read the cases.
MS. GARRETT: I'm sorry?

THE COURT: I do not know. I do not know what my

inclination is at this point. I want to read the cases upon which Plaintiff has cited here, the five. And so if you want a chance to --

MS. GARRETT: I would like the opportunity to reply.

THE COURT: All right. The five are Volt Information Sciences v. Board of Trustees, 109 S.Ct. 1248.

MS. GARRETT: 101 S.Ct. 1248?

THE COURT: Correct. Mueske v. Piper, 859 Pac.2d 444. Szuts v. Dean Witter, 931 F.2d 830.

MR. BALASUBRAMANI: There is also --

THE COURT: Pardon?

MR. BALASUBRAMANI: There's another one, Carr v. American Insurance Company.

THE COURT: Owen Building Contractors v. College Walk, 400 S.E. 2d 468.

MS. GARRETT: I'm sorry. 400 S.E. 2d?

THE COURT: 468

MS. GARRETT: 4-6-8?

THE COURT: Carr v. American Insurance, 152 F. Supp. 700. And American Guaranty Company v. Caldwell, 72 F.2d 209. Why don't I ask that if you file any -- find anything to deal with those cases, can you -- how fast can you do that?

MS. GARRETT: I can have that filed by the end of the week, your Honor.

THE COURT: All right.

MS. GARRETT: The court can receive it by Friday.

THE COURT: All right. Can I receive it by Friday?

MS. GARRETT: Yes.

THE COURT: And also, Mr. Balasubramani -- and there will be no response to this. That's the end,

MR. BALASUBRAMANI: Okay. So all this is not required? I was trying to give you one and then I was hoping they'll be here so that's why I made this whole thing.

THE COURT: Well, I appreciate -- the papers are late but I -- as I've indicated to you, it would be very excessive, but I have in fact got you to tell us the key cases upon which you're relying. We've got your oral argument. She's going to respond to those six cases in writing by Friday. I'll take this motion under submission so that I can consider what she says, too.

All right?

MS. GARRETT: And, your Honor, there will be no further oral argument?

THE COURT: No further oral argument.

MS. GARRETT: Thank you.

THE COURT: Okay. Thank you both.

MS. GARRETT: Thank you, your Honor.

THE COURT: And we are in recess.

(Proceedings recessed at 12:15 p.m.)

I certify, under penalty of perjury, that the foregoing is a verbatim transcription prepared from the electronic sound recording of the proceedings provided to me, and that said transcription is a true and accurate transcript to the best of my ability and belief.

"s/ Peggy Schuerge." Date: November 9, 1995.

APPENDIX 'G'

APPELLANT'S REPLY BRIEF.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
CASE NO. 95-56547

G.BALASUBRAMANI	)	
Plaintiff	)	PRAYER TO VACATE
v.	)	
MERRILL LYNCH	)	ARBITRATION AWARD
Defendant	)	
	)	

Appellant's or petitioner's reply brief.

I. DOCUMENTED FACTS OF THE CASE.

Merrill Lynch, in their reply brief dated 11 March 1996, has totally ignored to address the "issues Trial Court had to consider to make their decision" (page 4 in Brief for Appeallant). Merrill Lynch has not quoted any statutes, nor cited any Court decisions covering situations similar to the Claimant's case, where

(i) There is a contract signed by both parties to arbitrate "in accordance with the Constitution, By-Laws, Rules, Regulations and/or NASD Code of Arbitration Procedure....". (154 of ER).

(ii) Many terms of the contract were violated and not complied with, and the contract remains unfulfilled yet. (from pages 7-8 of Brief for Appellant): (1) Confiscating the Record of Proceedings, (2) Denying Transcript of proceedings, (3) Denying "due diligence" access to ROP, (4) Preventing Claimant from exercising his statutory right to appeal, (5) Tampering (editing) of ROP, (6) Not reading and having pleading materials before hearing, (7) NASD staff not present, (8) Not giving pro-se status to Claimant, (9) Denying presentation of evidence, (10) Denying cross examination of witnesses, (11) Allowing "perjury" evidence, (12) Ignoring Merrill Lynch's Rico violations, (13) "Consciously" avoiding to date award document, (14) Ignoring all "documented" testimony of Claimant, and accepting "hearsay" statements

of Merrill Lynch, and giving an industry-biased verdict favoring Merrill Lynch.

(iii) When asked for a complete recording proceedings, NASD on April 21, 1995 asked the Claimant to go to court, stating "you do have the power to seek a remedy through courts...", (49 of ER), and Claimant filed suit on May 15, 1995. NASD is responsible for the arbitration procedures, not Merrill Lynch.

(iv) There is clear RICO violation which has been documented, and guilt admitted by Merrill Lynch in tape recorded evidence during arbitration proceedings (18-23 of ER).

(v) Claimant originally filed Statement of Claim with NASD only against Merrill Lynch. NASD asked the Claimant to add other namers. Only Merrill Lynch responded to Claimant's Statement of Claim, to NASD, and made opening and closing statements, during arbitration. Others were treated as witnessess of Merrill Lynch, by Merrill Lynch, and the Claimant. Merrill Lynch is the only legal Corporate entity here, others are employees or ex-employees of Merrill Lynch, therefore Merrill Lynch is the only material party to the case. Upon objeections from Merrill Lynch, Claimant had amended the suit, and dismissed others, leaving only Merrill Lynch as the sole material defendant in the case.

(vi) As the Claimant's pro-se status plea was presented too late, the Claimant's pro-se status was not considered by the Court.

"At the hearing, and thus in an untimely manner, Plaintiff submitted 136 pages of supplemental authorities.... On July 6, 1995.... Plaintiff filed an opposition... This opposition exceeded the page limit for opposition papers by five pages". (238 of ER).

At the same time, Merrill Lynch got the last say in writing to the Court.

(vii) At the lower Court hearing also, Merrill Lynch had the first and last say. The Claimant was made the Defendant, and had to answer to Merrill Lynch's objections, thus reversing the roles, (193-195 of ER).

"The COURT:...Do you want to state your presence...".

"Mr. Balasubramani: Yes. My name is Balasubramani. Do I say anything more or --".

"The COURT: At this point that's sufficient".

"Mr. Balasubramani: Oh, okay".

"The COURT: Ms. Garrett, you're present also?"

"Ms. Garrett: Thank you, your honor.....".

"The COURT: ... I havfe read and considered the paers... This is the Defendant's motion to dismiss and opposition to the petition to vacate the arbitration award. Ms. Garrett, do you have anything you want to add to your papers at this time.

"Ms. Garrett: .... So Merrill Lynch would ask that the Court dismiss the petition to vacate on that basis."

"The COURT: Mr. Balasubramani, how would you get around the three month statute?"

II. RATIONATE AND OPINIONS OF JUDGES ARRIVING AT DECISIONS.

The Claimant is not asking to abrogate any statues. The Claimant has no desire to use *argumentum ad hominem* against the Defendant, citing numeous Court decisions against Merrill Lynch for SEC and other legal violations.

Claimant is pleading for "due process", "justice" and "equity". The Claimant begs the Appellate Court to slvage justice by applying the rationale and opinions of judges in arriving at decisions in the following Arbitration cases, which wsere cited in the Claimant's 2nd October brief to the District Court,. and in the Brief for Appellant. They were obtained from going to the University of San Diego Law library, spending hundreds of hours of manual research, going from aisle to aisle, and reading and re-reading the decisions. Hence, Claimant's

anxiety to bring them to the kinds attention of the Appeals Court. Please fogive me for the repitition.

Haines v. Kerner, 404 U.S. 519.

".. *pro se* complaint, which we hold to less stringent standards than formal pleadings drafted by lawers...". (Id. at 521).

" .. we conclude that he is entitled to an opportunity to offer proof". (Id. at 521).

Bonar v. Dean Witter Reynolds, 835 F.2d. 1378 (11th Cir. 1988).

"... A party may amend the party's pleading". (Id. at 1382).

Volt Info. Sciences v. Bd. of Trustees, 198 S. Ct. 1248 (1989).

"it does not follow, however, that the federal law has preclusive effect in a case where the parties have chosen in their (arbitration) agreement to abide by statues rules.". (Id. at 1252).

"the thrust of the federal law is that arbitration is strictly a matter of contract...the parties to an arbitration agreement should be 'at liberty to choose the terms under which they will arbitrate'." (Ibid.).

"application of the FAA to prevent enforcement of those rules would actually be 'inimical to the policies underlying state and federal arbitration law'... because it would 'force the parties to arbitrate in a manner contracry to their agreement'." (Ibid.).

"In cognition of Congress' principal purpose of ensuring that privatge arbitration agreements are enforceed accordingf to their terms, ..". "But it does not follow that the FAA prevents the enforcement of agreements to arbitrate under different rules than those set forth in the Act itswelf. Indeed, such a result would be quite inimicala to the FAA's purpose of ensuring that private agreements to arbitrate are enforced according to their terms.". (Id. at 1255-56).

It is unequivocally clear here that the terms of the contract must

be enforced first.

"Just as they may limit by contract the issues which they will arbitrate... so too may they specify by contract the rules under which that arbitration will be conducted.". By permitting the courts to 'rigorously enforce' such agreements according to their terms, ... we give effect to the contractual rights and expectations of the parites, ...". (Id. at 1256).

The lower Court erred in not enforcing the agreement according to the terms of the arbitration contract, resulting in the Claimant's contractual rights and expectations being violated.

"... they are free if they wish to write an agreement to arbitrate outside the coverage of the FAA. Such an agreement would permit a state rule, otherwise pre-emplted by the FAA, to govern their arbitration." (Id. at 1259).

Mueske v. Piper, Jaffray & Hopwood, 859 P.2d 444 (Montana 1993).

"This Court finds that the May 10, 1989 changes in the rules incorporated within the arbitration clause were deliberate and purposeful actions of the Securities Exchange Commission which require proper recognition from the Court .... ". (Id. at 447).

The recording (by tape or stenographer) of NASD arbitration proceedings was made mandatory by amending NASD Sec. 37, effective May 10, 1989 (166 of ER).

"Based on the language in Volt, a district court's goal, therefore, should be to give effect to the contractual rights and expectations of the parties..." (Id. at 448).

"arbitration clause incorporates the rules of the NYSE and NASD as controlling law." (Id. at 450).

Shearson/American Exp. v. McMahon, 107 S. Ct. 2332 (1987).

"Courts should take seriously their duty to review the results of

arbitration ...." (Id. at 2359).

Szuts v. Dean Witter Reynolds, 931 F.2d 830 (11th Cir.1991).

"... the specific provisions in the arbitration agreement take precedence ... This principle is recognized in the AAA Rules.". (Id. at 832).

Goldfinger v. Lisker, 500 N.E.2d 857 (New York 1986).

"Precisely because arbitration awards are subject to such judicial deference, it is imperative that the integrity of the process as opposed to the correctness of the individual decision, be zealously safeguarded." (Id. at 859).

"Our general reluctance to disturb arbitration aweards must yield in this case to the clear necessity of safeguarding the integrity of the arbitration process..." (Id. at 861).

III. AWARDS VACATED FOR PROCEDURAL LAPSES, INCLUDING 90 DAYS AFTER AWARD.

Holodnak v. Avco Corp., 381 F. Supp. 191 (D. Conn., 1974).

"The court agrees that the circumstances of the service do not represent a bar to this action. See American Guaranty Co. v. Caldwell,..." (Id. at 197-198).

American Guaranty Co. v. Caldwell, 72 F.2d 209 (9th Cir. 1934).

"Vacation of arbitrators' award held justified, where umpire was improperly appointed and partial to successful party, though motion to vacate was not filed within three months after award...". (Ibid.).

Owen Bldgs. Contractors v. College Walk, 400 S.E. 2d 468 (N.C. App., 1991).

"...service of the Award of Arbitrators, in the instant case, by regular mail did not commence the running of the 90 day perid..." (Id. at

470).

IV. AWARDS VACATED FOR PROCEDURAL LAPSES, AND/OR CONTRACT TERMS VIOLATIONS.

Awards were uniformly vacated by Courts for procedural lapses and/or violation of terms of arbitration contract in the following cases as well:

Campbell v. American Fabrics Co., 168 F.2d. 959.
Carr v. American Insurance Company, 152 F. Supp. 700,
Goldfinger v. Lisker, 500 N.E. 2d 857 (New York, 1986).
Hotel Condado Beach Etc. v. Union De Etc. 763 F.2d 34 (1985)
Jones v. St. Louis-San Fransico Ry.Co., 728 F.2d 257 (1984).
Mueske v. Piper, Jaffray & Hopwood, 859 P.2d 444 (Montana 1993)
Szuts v. Dean Witter Reynolds, 931 F.2d 830 (11th Cir. 1991).
Teamsters, Chauffeurs, etc. v. E.D. Clapp Corp., 551 F. Supp. 570 (1982).
Totem Marine Tug & Barge v. North American Towing, 607 F.2d 649 (1979), and
Western Canada Steam v. Cia. De Nav. San Leonardo, 105 F. Supp. 452.

V. PRAYER TO COURT.

Claimant apologizes for the delay in submitting this Reply Brief, caused by his absence in India to attend to his old mother, and requests the Court's kind indulgence, as requested in item (4) under pro-se introduction on page 3 of the Brief for Appellant.

Based on rationlae and opinion and Court decisions of Arbitration cases cited above, and the various documents given to the Court, Claimant prays to the Appeals Court to reverse the lower Court decision and vacate the so-called undated arbitration award.

Should the Appeals Court decide, this is not the venue for this complaint, Claimant begs the Court to either transfer the case to the appropriate judiciary, or tell him which judicial agency will try this case, for non-perforamcen of the arbitration contract, and for vacating the

undated award. Any help the Appeals Court can give to transfer the papers, would save the Retiree Claimant time and money.

Please grant me a maximum of ten minutes of hearing time.

I solemly swear that all that I have stated here is the truth, the whole truth, and nothing but the truth, so help me God.

Temecula, Riverside County, California, Dated this 8th day of April, 1996.

Respectfully submitted,

/sd/
G. Balasubramani

APPENDIX 'H'

STATUTES, RULES, CODES ETC.

28 U.S.C. sec. 1254. Courts of appeals; certiorari; certified quiestions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

9 U.S.C. sec. 2. Validity, irrevocability, and enforcement of agreements to arbitrate.

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controvery thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such contract, transaction, or refusal,

shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Fed. R. Civ. P. Rule 15. Amended and Supplemental Pleadings

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

National Association of Securities Dealers, Inc. ("NASD")
Code of Arbitration Procedure.

Awards

Sec.41. (a) All awards shall be in wiriting and signed by a majority of the arbitrators.....

(e) The award shall contain the names of the parties, the name of counsel, if any, a summary of the issues, including the type(s) of any security or product, in controversy, the damages and other relief requested, the damages and other relief awarded, a statement of any other issues resolved, the names of the arbitrators, the dates the claim was filed and the award rendered, the number and dates of hearing sessions, the location of the hearings, and the signatures of the arbitrators concurring in the award.

Recording of Proceedings.

Sec.37. A verbatim record by stenographic reporter or a tape recording of all arbitration hearings shall be kept. If a party or parties to a dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed. If the record is transcribed at the request of any party, a copy shall be provided to the arbitrators.
[Amended effective May 10, 1989.]

APPENDIX 'J'

"DUE PROCESS" ISSUE RAISED .

(Excerpts of Record, referred below, was given to the Appeals Court).
From COMPLAINT filed with the District Court on May 15, 1995.

". . . . If allowed to hold, this would lead not just to a miscarriage of justice but, a travesty of the whole arbitration process. I would think I have every right to get a "semblance of a fair" trial (even if it is called "informal" arbitration, that is controlled by Investor groups like Merrill Lynch). The proceedings and award has violated my basic civil rights:

1) to be treated equally without discrimination,
2) to expect the Panel to read the materials "thoroughly" prior to start of the arbitration proceedings,
3) to be allowed to present evidence,
4) to be heard,
5) to be allowed to "thoroughly" cross examine witnesses,
6) to be judged based on the "documentary" evidence presented than the "hearsay" evidence, and
7) to be provided with an unedited and complete record of the proceedings in a timely manner, upon request."

(page 10, lines 4 thru 19 of Excerpts of Record).

APPENDIX 'K'

From Petitioner's REPLY BRIEF dated 6th July, 1995, to Merrill Lynch's Opposition.

"By denying access to complete record of proceedings and complete transcript of the proceedings, we are denied due process." (page 56, lines 16-17 of Excerpts of Record)

". . . . this court is our last refuge; if we are rejected, we will have no place to go, and we will be denied due process." (page 56, line 28, and page 57, lines 1-2 of Excerpts of Record).

". . . . it is nearly eight years since Merrill Lynch injured the claimant and his family. In addition, NASD arbitration contract, with violations, remains unfulfilled, and we are denied due process." (page 59, lines 10-13 of Excerpts of Record.)

". . . . With our 7th November 1993, letter to NASD . . . . we had attached copy . . . . wherein we had documented in great detail under Flaws in NASD Arbitration Procedures/Proceedings, how we were discriminated." (page 59, lines 14-18 of Excerpts of Record).

"(4) The claimant, as per NASD Procedures Sec.37, is entitled to proceedings. This has been denied, thus not fulfilling the Merrill Lynch contract. What is more, this denies the claimant of "due process". (page 59, line 28, and page 60 lines 1-3, of Excerpts of Record).

"(5) The claimant, as per NASD Procedures Sec. 37, is entitled to transcript. This has been denied, thus not fulfilling the Merrill Lynch contract. What is more, this denies the claimant of "due process". " (page 60, lines 4-7 of Excerpts of Record.).

"(6) The Court's rejecting the claimant's plea will certainly result in denial of "due process" -- (so far, the claimant has been thwarted by: Merill Lynch, lawyers, Security Exchange Commission, National Association of Securities Dealers, etc. This court is my last refuge, and if your honor also rejects, where do I go next for "due process" and "justice"?). (page 60, lines 8-13 of Excerpts of Record.).

"Or, alternatively, with your honor's approval, keep this suit in temporary abeyance, and I file a separate related suit against NASD and Merrill Lynch (both New York based), for non-performance of contractual obligations, for discrimination, and for denying "due process". (page 61, lines 23-27 of Excerpts of Record.)

"To apply this number-of-days-statute, the law-makers might have had some 'semblance' of the following scenario in mind:

(1) both sides to the Arbitration are represented by counsel, and the Proceedings are conducted as if it was a regular Court,

(2) upon request, (without repeated telphone calls and desparate

letters), either party "readily" got copy of the record of the Proceedings/Transcripts,

(3) and the party then moved the Court to vacate/modify/confirm the award with copy of the record of proceedings.

Did our arbitration have any semblance to the conditions the lawmakers envisaged? No, except in name, nothing matched." (page 71, lines 10-20 of Excerpts of Record).

"Thus the contract signed between Merrill Lynch and the claimant, is unfulfilled and undischarged. Apart from the NASD contractual obligations, denying me access to record of proceedings, is tantamount to denying me "due process". (page 75, lines 15-18 of Excerpts of Record.)

"In our case also, we have a situation of recorded tapes (and even an NASD Sec.37 entitling the claimant to copy of proceedings/ transcript). Absolutely a totally innocuous and irrelevant incident for the rest of the world, except causing serious injury to the claimant and his family, and affecting "due process". Because of "loop-holes", the Arbitration System seems to have greater powers far beyond the "executive privilege" of the U.S. President, nay, the U.S. Constitution. And then, there is Merrill Lynch who could commit pre-meditated fraud on a retiree using a rookie broker, (ignorant of Merrill Lynch office policies, much less Security Laws), and cover it up, and yet has so far been above and beyond the tentacles of the law. What can a poor retiree do, without the help of some such Hon. Sirica or Hon. Cox?". (page 76, lines 5-17 of Excerpts of Record.)

"Based on my foregoing statements, evidence, and our pleadings of May 15, 1995, and the supporting documents, I plead with your honor for "due process", "justice" and "equity", .." (page 81, lines 23-25 of Excerpts of Record.)

"(4) or, if required, to grant me permission to file a new complaint against NASD and Merrill Lynch for non-performance of the Arbitration contract and due process," (page 82, line 16-18 of Excerpts of Record.).

From APPELLANT's BRIEF DATED 22ND NOVEMBER 1995.

"IV. State the Claims you raised at the District Court.

"The *raison d'etre* for Record of Proceedings is to support an arbitration award/court decison; in effect, ROP is part and parcel of award/decision." (page 3, lines 24-27).

"What issues Trial Court had to consider to make their decision:

1) Do Courts require Record (transcript) of Proceedfings, or do Courts always rule on Vacatur motions based simply on a complaint from a party, even pro-se, without any proof of the proceedings.

2) When the terms of contract calls for mandatory ROP, and the party immediately asked for the ROP, will the award document, without the ROP, or the award document with the ROP, start the tolling for FAA, based upon the arguments found in Volt and other case-laws, and the need for ROP by Courts.

3) The Statute forfeiting the Rights of a Claimant to enforce the terms of arbitration contract.

4) Do the grounds documented in the instant case, "qualify" for Vacatur.

5) Rights of Arb. Panel to confiscate ROP after giving verdict to NASD.

6) Rights of Arb. Panel, despite repeated demands, to deny a party's statutory right to ROP, and to create hardship such that a party is prevented from exercising their statutory right to appeal.

7) Rights of Arb. Panel to "edit" the Record of Proceedings."

(page 4, lines 1-19 of Appellant's Brief).

"Claimant had also stated in his 15th May complaint, that he was discriminated. 'The proceedings and award has violated my basic civil rights . . . . to be treated equally without discrimination . . . . , (10 of Excerpts of Record.)'."

(page 6, lines 6-9 of Appellant's Brief).

APPENENDIX 'M'

From APPELLANT's REPLY BRIEF dated 8th April, 1996

"Claimant is pleading for "due process", "justice" and "equity". The Claimant begs the Appellate Court to salvage justice by applying the rationale and opinions of judges in arriving at decisions in the following Arbitration cases, which were cited in the Claimant's 2nd October brief to the District Court, and in the Brief for Appellant." (page 4, lines 11-16).

"The lower Court erred in not enforcing the agreement according to the terms of the arbitration contract, resulting in the Claimant's contractual rights and expectations being violated."
(from page 6, lines 1-3).

APPENDIX 'N'

Paul Sonnenburg
5411 Carolina Place, NW
Washington, DC 20016-1525
(202) 966-1007

16 November 1995

G. Balasubramani
40413 Yardley Court
Temecula, CA 92591

Ref: Judicial Appeal re. NASD Arbitration Number 93-02674
Balasubramani v. Merrill Lynch
22-23 June 1994 - Sheraton Miramar, Sanata Monica, CA

To Whom It May Concern

I write in support of the Balasubramni action and appeal in the above matter, and to declare my willingness to testify in writing or in person and under oath concerning these matters at any time it may please the court of jurisdiction.

Since late 1987 I have assisted the Balasubramanis in preparing their claim for redress to Merrill Lynch, including their primary statement of the claim, the "Red Book" of February 1988. As a professional colleague and personal friend of the claimants since 1965, I possess extensive firsthand knowledge of the family's character and habits and personally observed a significant portion of the relevant events contemporaneously.

Most cogently, I participated directly in the preparation of the claimants' arbitration claim and documentation; I attended the NASD hearing throughout its duration in June 1994. Cogent to the instant appeal are these three issues of substance:

1. At the hearing's outset, arbitrator Philip Saltz stated that he was unaware of the existence of the claimants' principal documentation of their claim, the above-mentioned "Red Book." Therefore at least one arbitrator heard the claimants' core oral

argument while ignorant of the principal body of evidence upon which the claim was based.

2. Immediately after the hearing, I endeavored, in compliance with NASD's published arbitration guidelines, to submit additional materials for the panel's assessment. Even as I was en route to the local facsimile outlet to send the materials to NASD and the arbitrators that Monday morning, Mr. Balasubramani was advised that the panel had already reached their determination.

3. For many weeks after the hearing, NASD was unable or unwilling to provide a copy of the taped proceedings, as provided for in their published guidelines. When a copy was ultimately provided, after extensive delay and repeated requests, it was grossly incomplete and otherwise inadequate.

These and other omissions and commissions throughout the NASD arbitration process provide compelling grounds for the assertion that the process was inadequate and improper, and that the resultant findings should be vacated.

I am prepared to provide my personal testimony or such other evidence as the court may require upon reasonable notice.

Respectfully,

/sd/
Paul Sonnenburg

PS

APPENDIX 'O'

NASD Arbitration
National Association of Securities Dealers, Inc.
NASD Financial Center- 33 Whitehall Street
New York, N.Y. 10004 - Fax 212-858-4389

July 8, 1993

Mr. G. Balasubramani
40413 Yardley Court
Temecula, California 92591

Subject: NASD Arbitration Number 93-02674
G. Balasubramani & Lalitha Balasubramani vs.
Merrill Lynch Pierce Fenner & Smith Inc.

Dear Mr. Balasubramani:

Please be advised that this office is in receipt of your Statement of Claim and attachments thereto. However, we note the following deficiencies:

Specifically state the name(s) of each and every respondent.

Pursuant to Section 14(a) of the NASD Code of Arbitration Procedure, any claim over $10,000 shall require in writing unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings and documentary evidence.

Submit an itemized calculation of damages, including punitives, and the total amount sought.

In the arbitration dispute involving a public customer, the NASD will select a hearing location that is closest to the customer's residence at the time the dispute arose. The initial hearing location is Los Angeles, which is closest to Northridge, CA. Final decision as to the hearing location is for the arbitrators.

The claim will not be served until the noted deficiencies are corrected. If

the above listed deficiencies are not corrected within 30 days, the case will be closed without prejudice.

ALL CORRESPONDENCE (INCLUDING CHECKS) SENT TO THIS OFFICE MUST BE CLEARLY MARKED WITH THE APPROPRIATE NASD CASE NUMBER

Very truly yours

"s/William G. Haviland."
Legal Assistant
212-858-4360

WGH:JMB:LC15A

APPENDIX 'P'

G. Balasubramani
40413 Yardley Court
Temecula, CA 92591-7027
(909) 699-6644

27 June 1994

Mr. Lucien Salem, Esq.
Senior Attorney
NASD Arbitration Department
525 Market Street, Suite 300
San Francisco, CA 94105

URGENT
By Fax & Federal Express
(415) 546-6990

Ref: NASD Arbitration Number 93-02674
Balasubramani vs. Merrill Lynch
Request for Transmittal of Hearing Material to Panel

Dear Mr. Salem:

In concluding the hearings in the above-referenced arbitration in Santa Monica last Thursday, Panel Chair James Munroe announced that "these proceedings will remain open until determination of an award."

I learned only too late for the hearing itself, but you will be familiar with the provision of the Uniform Code which stipulates that parties "may . . . be represented by a person who is not an attorney, such as a . . . friend." The Uniform Code also grants parties "the absolute right to representation by counsel at any stage of the proceeding."

My colleague and friend, Paul Sonnenburg, assisted me throughout the proceedings beginning, in fact, from 1 February 1988 when I made my first claim for compensation to Respondents. Moreover, he attended all the hearing sessions with the express advance approval of counsel for Respondents, and, as you will see from the accompanying cover letter and materials, reached a strongly held conclusion.

Therefore, I wish to formally request that Mr. Sonnenburg's letter and tapes be forwarded to the panel members for consideration in their deliberations as an integral component of my final rebuttal and closing argument.

Inasmuch as I had reserved my entire closing for rebuttal -- the last material presented by the parties at the hearing -- this writing and oral presentation would have followed Respondents' closing remarks under any circumstances. Therefore I submit that its presentation now in no way compromises the defense mounted by Respondents. Indeed, it will redress the large imbalance of time and focus extant between Claimant and Respondent when the hearings concluded.

Enclosed are an original and four copies of the writing and tapes: the original intended for Mr. Munroe as Chair; one each for Messrs. Eglash and Saltz; one for Mr. Olney at Merrill Lynch, and one for your file.

I ask that you immediately advise the panel members by telephone that text and tapes are enroute, and confirm to us your approval and acceptance of this request and materials for transshipment.

Respectfully,
"s/ G. Balasubramani."
L. Balasubramani

Encl: as
cc: Messsrs. Munroe, Eglash, Salts and Olney.

NOTE: Immediately on receipt of the fax on the morning of 27th June, 1994, NASD called and said the award has already been determined, so Mr. Sonnenburg's letter was not sent to NASD. However, copy of Mr. Sonneburg's letter was filed with the the 15 May 1995 Complaint to the District Court.

Mr. Sonnenburg's letter being lengthy, is not made part of the Supreme Court Attachment.

APPENDIX 'Q'

G. Balasubramani
40413 Yardley Court
Temecula, CA 92591-7027
(909) 699-6644

30 September 1994

Mr. Lucien Salem, Esq.
NASD Arbitration Department
525 Market Street, Suite 300
San Francisco, CA 94105

Ref: NASD Arbitration Number 93-02674
Balasubramani vs. Merrill Lynch
Third Request for Tape Recorded Record of Proceedings

Dear Mr. Salem:

As you will recall from the enclosed letter copy and our August reminder, I am concerned to obtain a set of the tapes of our arbitration hearings of 22-23 June at the Sheraton Miramar Hotel, as stipulated in applicable NASD procedures.

You informed me that you would determine the cost and advise me so that I might forward my check for timely fulfilment of my proper request.

In the absence of any compelling reason to the contrary, may I ask that you honor your commitment now and facilitate my receipt of the tapes at your earliest convenience, but in no event later than 10 October.

Respectfully,

/sd/
G. Balasubramani

APPENDIX 'R'

G. & Lalitha Balasubramani
40413 Yardley Court
Temecula CA 92591
(909) 699-6644

7 November 1994

Ms. Deborah Masucci
Director
NASD Arbitration
33 Whitehall Street
8th Floor
New York, N.Y. 10004

Re: G. and Lalitha Balasubramani vs. Merrill Lynch,
NASD Arbitration No. 93-02674

Dear Ms. Masucci:

After completion of the above Arbitration, and the Award, we wrote to NASD, San Francisco Office on 20 July. Further, we sent a few reminders, and made also a telephone call, and despite all our efforts, we have been unable to get copies of the taped recordings of the Arbitration proceedings.

We are also disappoined in NASD not providing in advance pertinent materials to the Panelists relating to this arbitration. I am enclosing a copy of letter I have sent to my friend (who is also a writer), Mr. M.T. Antony on the subject.

Please tell me what I should do next in this matter. Since we are leaving for India on 19 November, I would like to hear from you if possible prior to that date, or else you can communicate with me in India on the subject with a copy to our Temecula address.

Many thanks.

Respectfully,

s/ G. Balasubramani

cc: (4 copies to Mr. Lucien Salem, Esq.
Senior Attorney, NASD Arbitration Department
525 Market Street, Suite 300
San Francisco, CA 94105 - one copy for NASD
one copy each for Mr. James Munroe, Esq.
Mr. Philip Saltz, Esq.
Mr. Louis Eglash, Esq.)

cc: Mr. John R. Cummings, Esq.
First Vice President,
Litigation Department
Merrill Lynch
World Financial Center
North Tower,
New York, N.Y. 10281-1312

cc: Mr. Michael E.Olney
Vice President and Senior Counsel
Merrill Lynch
World Financial Center
North Tower
New York, N.Y. 10281-1312

cc: Mr. Paul Sonnenburg
5411 Carolina Place, N.W.
Washington, D.C. 20016

cc: Mr. M.T. Antony
890 Broadway
Woodmere, N.Y. 11598

NOTE: Copy of letter to Mr. Antony (pages 30-37 of ER), being lengthy, not attached to the Supreme Court Appendix.

APPENDIX 'S'

NASD
Arbitration - 525 Market Street, Suite 300 -
San Francisco, CA 94105-2711 - 415-882-12324 - Fax 415-546-6990

November 16, 1994.

via Federal Express, Priority

Mr. G. Balasubramani
40413 Yardley Court
Temecula, California 92591

Re: Balasubramani v. Merrill Lynch etc. et al., NASD No.93-2674
Claimant's Letter to Debora Masucci of November 7, 1994

Dear Mr. Balasubramani:

Thank you for your letter to Deborah Masucci of November 7, 1994, to which she has asked me to respond. We acknowledge that you have requested copies of the record of your hearing. This letter confirms our conversations of November 9 and 10 that, upon your initial request, I asked arbitrators to send me the tapes on July 19, 1994 since I did not attend the hearing. When I did not receive the tapes, I inquired again of the arbitrators, but did not receive the tapes until November 14, 1994. I forwarded them to you on November 14, 1994 by Federal Express, priority. Please excuse the delay in processing your request.

You stated in your letter that one of the arbitrators "had not seen a copy of the most important document . . . . (the exhaustive 1st Feb 88 letter . . .)," at the hearing. Our file shows that that document was sent to all arbitrators, along with the rest of your submissions, as part of the Arbitrator's Exhibit One. The arbitrators assured me that there was no issue with respect to lack of evidence, or time to consider it, which had any impact on their consideration of the case. Furthermore, the arbitrators could have adjourned the hearing at any time to review the document if they deemed it necessary.

You are obviously dissatisfied with the results of your arbitration. However, once an arbitration award is rendered, it can only be challenged by means of a motion to vacate in a court of competent

jurisdiction. No member of the arbitration department staff has the power to overturn or change an arbitrator's decision. I suggest that you consult with an attorney regarding the grounds available to vacate an award.

With respect to your request that I forward your latest letter and attachments to the panel, Section 40 of the National Association of Securities Dealers' Code of Arbitration Procedure provides that a hearing may not be reopened after the award is rendered. Accordingly, unless the award is vacated by a court, the arbitrators' decision will remain in effect, the record is closed and no further submission may be forwarded to the panel. You do have the power to seek a remedy through the courts and I urge you to consult with your attorney regarding your rights.

Please feel free to contact me if there are any further questions. Thank you for your consideration.

Very truly yours,

S/ Lucien Salem, Esq.
Senior Attorney

LSS/RA

cc: Deborah Masucci, Esq.
Vice President and Director of Arbitration

All parties.

APPENDIX 'T'

G. & Lalitha Balasubramani
40413 Yardley Court
Temecula, CA 92591
(909) 699-6644

4 April 1995

By Certified Mail
Mr. Lucien Salem, Esq.
Senior Attorney
National Association of Securities Dealers, Inc.
525 Market Steet, Suite 300
San Francisco, CA 94105-2711

Re: G. and Lalitha Balasubramani vs. Merrill Lynch
NASD Arbitration No. 93-02674

Dear Mr. Salem:

Just as I was leaving for India, in the latter part of November 1994, finally I got the copies of tapes of the proceedings sent by Mr. Rick Agbay, and thank you for the same.

I recently returned from India. To file a suit in court to have the Arbitration Award vacated, our attorney needs copies of printed transcripts of the proceedings of the above Arbitration. I shall be grateful if you would kindly send me as soon as possible a copy of the printed transcript of the above arbitration proceedings. Please let me know by return mail or over telephone, the amount I should send you to get the printed transcript.

Thanking you,

Respectfully,

/sd/
G. Balasubramani

cc: Michael E. Olney

APPENDIX 'U'

G. & Lalitha Balasubramani
40413 Yardley Court
Temecula, CA 92591
(909) 699-6644

13 April 1995

By Fax to (415-546-6990) and copy with tapes sent by mail.
Mr. Lucien Salem, Esq.
Senior Attorney
National Association of Securities Dealers, Inc.
525 Market Steet, Suite 300
San Francisco, CA 94105-2711

Dear Mr. Salem

Re: G. and Lalitha Balasubramani vs. Merrill Lynch
NASD Arbitration No. 93-02674 - copy of proceedings.

This has reference to various correspondence and telephone calls, resting with my letter of 4 April 1995 and your kind telephone call to me on the afternoon of 7th April 1995 when you informed me that NASD would not provide printed transcripts of the proceedings, and I should make my own arrangements to get the transcripts from the tapes Mr. Rick Agbay of your office sent me.

Enclosed is a copy of the printed labels on the tapes received from NASD. After you called me, I played and listened to the tape recordings. The tape recordings contain only part of the proceedings, in other words, it is incomplete, and furthermore, it is not sequential. (Among others, missing are pertinent incriminating facts, based on which any judge will give an order to vacate the arbitration award - the part during my presentation when one of the arbitrators said he had not seen copy of the RED book -- the basic foundation on which our Statement of Claim is built -- the evidence would further conclude that the Blue Book which contains the Statement of Claim was obviously not read completely either, because the BLUE book refers to the RED book as attachment 21, so if someone was properly reading the Statement of

Claim, they would have had to then ask for and get a copy of the attachment 21, the RED book -- also missing are: Mr. Jack Peschong's perjuring testimony, including cross examination by claimant and the Arbitration Panel, all of Mr. Burt Rosen's testimony, and the cross examination by claimant and the Arbitration Panel, favoring the claimant) -- all these are missing, and may be more. I have dubbed and made copies of the tapes, which are sent herewith; you can listen and verify and confirm that what I have stated here is the truth, the whole truth, and nothing but the truth.

I shall be grateful if you would kindly arrange to send me immediately a set of tapes containing the complete proceedings and in sequence. You know the matter is urgent and imporrant, so I seek your kind help and cooperation to expedite this.

Thanking you,

Respectfully,

"s/G. Balasubramani."

Encl: copies of 4 tapes

cc: Ms. Deborah Masucci
Vice-President & Director of Arbitration
National Association of Securities Dealers (NASD)
33 Whitehall Street, 8th Floor
New York, N.Y. 10004

cc: Mr. John R. Cummings, Esq.
First Vice President
Merrill Lynch
World Financial Center
North Tower
New York, N.Y. 10281-1312

cc: Mr. Michael E. Olney, Esq.
Vice President and Senior Counsel
Merrill Lynch
World Financial Center
North Tower
New York, N.Y. 10281-1312

APPENDIX 'V'

G. & Lalitha Balasubramani
40413 Yardley Court
Temecula, CA 92591
(909) 699-6644

14 April 1995

Mr. Lucien Salem, Esq.
Senior Attorney
National Association of Securities Dealers, Inc.
525 Market Steet, Suite 300
San Francisco, CA 94105-2711

Dear Mr. Salem

Re: G. and Lalitha Balasubramani vs. Merrill Lynch
NASD Arbitration No. 93-02674 - copy of proceedings.

Yesterday afternoon, I went out and sent you by fax my letter of 13 April, and then went to the Post Office and sent the same letter by priority mail, with copies of the 4 tapes. When I got home afer this errand around 5 P.M., I was shocked to hear from my wife that Mr. Lucien Salem of NASD had called immdiately after getting the fax, and said that they have no other tapes than the ones already sent to us. I expected to hear from you only after you received copies of the tapes I sent, and your office had time to review and compare them with the existing originals or the new ones you might acquire from the Arbitrators.

Please confirm to me in writing that you have made your best efforts to obtain and make copies of the full and complete set of tapes of the Proceedings.

I would also request that you kindly send a set of these tapes to Ms. Deborah Masucci, Vice-President and Director of Arbitration, NASD, New York, for their review, inquiry and report.

Thanking you for your cooperation,

Respectfully,

"s/G. Balasubramani."

cc: Ms. Deborah Masucci, NASD
33 Whitehall Street, 8th Floor, New York, N.Y.

cc: Ms. John R. Cummings, Esq, Merrill Lynch,
World Financial Center, North Tower, New York, N.Y.

cc: Mr. Michael E. Olney, Esq., Merrill Lynch,
World Financial Center, North Tower, New York, N.Y.

cc: Mr. M.T. Antony, 890 Broadway, Woodmere, N.Y. 11598

cc: Mr. Paul Sonnenburg, 5411 Carolina Place, N.W.
Washington, D.C. 20016.

APPENDIX 'W'

NASD
Arbitration - 525 Market Street, Suite 300 -
San Francisco, CA 94105-2711 - 415-882-12324 - Fax 415-546-6990

April 21, 1995

Mr. G. Balasubramani
40413 Yardley Court
Temecula, California 92591

Re: Balasubramani v. Merrill Lynch etc. et al., NASD No.93-2674
Claimants' Letters of April 13, 14 1995

Dear Mr. Balasubramani:

Thank you for your letters of April 13 and 14, 1995. I have reviewed the tapes and the number and content are consistent.

As previously explained to you in my letter of November 16, 1994 (which responded to your earlier letter to Deborah Masucci) once an arbitration award is rendered, it can only be challenged by means of a motion to vacate in a court of competent jurisdiction. No member of the arbitration department staff has the power to overturn or change an arbitrator's decision. I suggest you consult with an attorney immediately regarding the grounds available to vacate an award, since the time limits to file a motion to vacate are often short.

With respect to your request that I forward a set of the tapes to Deborah Masucci "for their review, inquiry and report," Section 41 of the NASD Code of Arbitration Procedure provides that a hearing may not be reopened after the award is rendered. Accordingly, as all procedures were followed regarding this arbitration, unless the award is vacated by a court, the arbitrators' decision will remain in effect, the record is closed and no further submission or review may be accepted by this office. It is therefore not necessary for Ms. Masucci to be sent a copy of the tapes. You do have the power to seek a remedy through the courts and I urge you to consult with your attorney regarding your rights. The tapes you forwarded are enclosed.

Please feel free to contact me if there are any further questions. Thank you for your consideration.

Very truly yours,

"s/Lucien Salem, Esq."
Senior Attorney

LSS/RA

cc: Deborah Masucci, Esq.
Vice President and Director of Arbitration
All Parties

**********END OF APPENDIX**********